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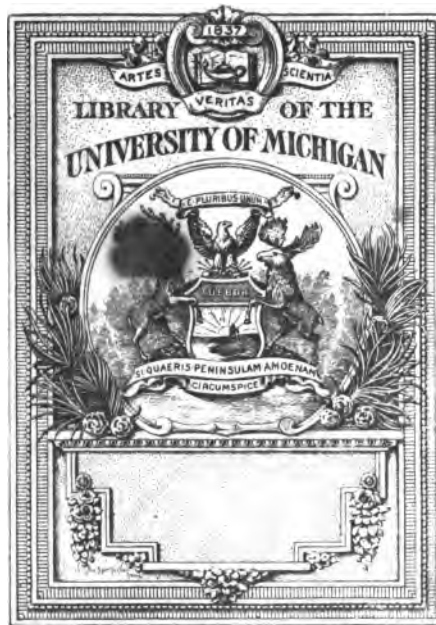
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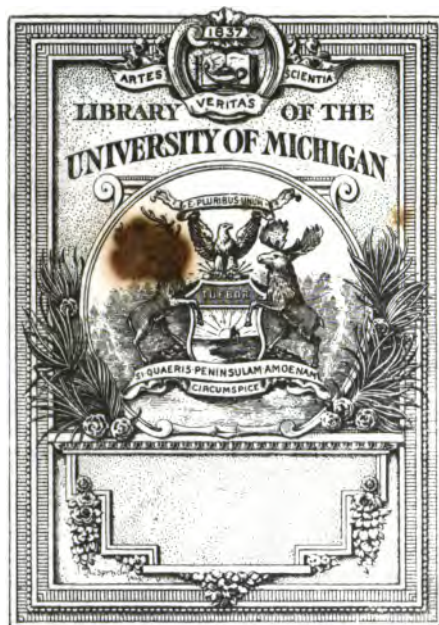
# LAW AND USAGE OF WAR

A PRACTICAL HANDBOOK OF THE  
LAW AND USAGE OF LAND AND  
NAVAL WARFARE AND PRIZE

SIR THOMAS BAILEY



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LAW AND USAGE OF LAND AND  
NAVAL WARFARE AND PRIZE

BY

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"PROBLEMS OF INTERNATIONAL PRACTICE AND DIPLOMACY," "THE  
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REMINISCENCES," ETC.

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16 July 16 F. A. M.

## PREFACE

THIS book was originally prepared as a treatise on the law of maritime war and prize. For the convenience of the reader at a time when nobody has leisure to wade through the historical or theoretical matter with which a systematic treatise is bound to deal, I have selected from my intended book the material needed for immediate reference. Moreover, the present war being even for this country a war on land as much as (if not more than) a naval war, and there being no quite recent treatise, except the official Manual on war on land, it was suggested that the book should deal with war generally, and as such would be welcomed by laymen as well as by those who have to deal with its legal aspects professionally.

Furthermore, to make reference easier, I have broken up the different subjects into short and concise articles, and placed the whole in alphabetical order.

The appendices are as complete as it has been possible to make them without swelling the book to unpractical dimensions. The ample references to them and a full index will enable the reader to find at once the exact text.

The volume has no pretension to dispensing with the use of Colonel Edmonds' and Professor Oppenheim's excellent official manual on land warfare above referred to, which is available to the public, or with the official "Manual of Naval Prize Law" which is a confidential publication for

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the guidance of naval officers, though it may serve as a useful supplement to both.

In short, my object has been to produce a volume useful not only for student and layman, but also for those who have to deal promptly with actual cases as they arise.

T. B.

13, OLD SQUARE,  
LINCOLN'S INN.

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## INTRODUCTION

WAR brings into operation certain rights and duties, as between belligerent States and their citizens, as between the belligerents, and as between belligerents and neutrals, which remain in force from the date of the *commencement of the war* (*q.v.*) until its termination. An *armistice* (*q.v.*) is not a suspension of war, but of hostilities. War ceases only with the conclusion of peace.

The law of war comes into operation as regards citizens of a belligerent State from the day and hour from which it is officially notified to begin.

As between belligerents it dates from receipt of notice of the declaration of war by the enemy State. The hour of receipt of the notice is of importance, but it has not the same effect as in the case of neutrals.<sup>1</sup>

A neutral State is only affected by the existence of war from the date of receipt of notice, which may be sent by telegraph, although it is debarred from setting up absence of notice if it can be shown that it was beyond question aware of its existence,<sup>2</sup> this knowledge being equivalent to notice whose only object is to place the possession of it beyond question.

From these respective dates the law of war is operative against all mankind.

The law of war may be subdivided into (a) relations between belligerents in war on land, (b) relations between belligerents in naval war, (c) relations between belligerents and neutrals in war on land, and (d) relations between belligerents and neutrals in naval war.

<sup>1</sup> See Hague Convention, 1907, No. I. Art. 1, and No. VI.

<sup>2</sup> Hague Convention, No. I., Art. 2.



A great deal of the law relating to these different aspects of war has already been codified by the Geneva Convention (1906), The Hague Conventions and Declarations (1899-1907), and the Declaration of London (1908-09).

To division (a) belong Conventions No. III., relating to the commencement of hostilities, and No. IV. (with the Regulations for the conduct of armies in the field), concerning the laws and customs of war on land.

To division (b) belong No. VI., relating to the treatment of enemy merchant ships at the commencement of hostilities; No. VII., relating to the conversion of merchant ships into ships of war; No. VIII., relating to the employment of submarine mines; No. IX., relating to bombardments by naval forces; and No. XI., relating to mail-ships and fishing and coasting vessels. There is also the Geneva Convention relating to the sick and wounded in time of war, and The Hague Convention, No. X., adapting its principles to maritime war.

The drafting of a code of Regulations for the conduct of naval war like those annexed to Convention No. IV. for war on land was bequeathed to the Third Hague Conference, which was to have been held eight years after the second—that is, in 1915. The Institute of International Law has meanwhile drawn up a proposed code of the laws and customs of maritime warfare, in which the rules already adopted on this subject have been incorporated, and in which the existing code of regulations for the conduct of war on land has been adapted to naval war. This "code of naval war" was finally discussed at a plenary meeting of the Institute of International Law (*q.v.*) at the Oxford meeting of that body in 1913, and may meanwhile be regarded as an authoritative statement by the chief international lawyers of Europe on the subject.

To division (c) belongs Convention No. V. relating to the rights and duties of neutral Powers and persons in war on land; and to division (d), Convention No. XIII. relating to the rights and duties of neutral persons in naval war. To this division also belongs the Declaration of London, which forms an international code of Prize Law.

The law of naval war differing in essential particulars from the law of war on land, it is of importance to bear in mind

what is the relative scope of the two systems under the existing practice of International Law. The Oxford Rules on naval war (1913) provide that "the special rules relating to maritime war are only applicable to the high sea and the territorial waters of the belligerents to the exclusion of those waters which in respect of navigation cannot be considered as maritime."

Territorial waters (*q.v.*) differ from the high sea in being a belt of the sea along the coast over which the adjacent State has a right of sovereignty, though for purposes of innocent navigation the ships of other States have a right of passage through them.

The belt is measured from low-water mark. For bays, estuaries, or other openings from the sea, however, it is measured from a line drawn across the opening. Within this line, landwards, the waters are subject to the jurisdiction of the adjacent State absolutely. These are the exception to which the Oxford Rules refer. Thus, acts of war within these waters are not governed by the rules of naval war, but by those relating to war on land.

A roadstead is an anchorage not within a port or haven. It follows from the universally admitted definition of "territorial waters" that where the roadstead is a part of the belt through which the right of innocent passage is exercisable it forms part of the territorial waters. Where it is protected by a breakwater, pier, or jetty built into the sea, it must be classed along with bays, the head of the projecting masonry being treated as a promontory, and the territorial belt being measured from a line drawn from such head to a spot on the coastline, which is in accordance with the rule for the measurement of inland waters in the case of bays. Roadsteads are assimilated under No. XIII. (1907) to ports and inland waters.

Thus the capture of an enemy merchant vessel within an enemy port, harbour, or roadstead as above defined would be subject to the law of war on land, and would not be a capture according to the law of naval war.<sup>1</sup> The capture of a neutral ship is subject to the same distinction. Two of the Hague

<sup>1</sup> See, however, Naval Prize Act, 1864, Sect. 34, p. 226.

Conventions (1907) relate to neutral rights and duties, the one of them to those in war on land (No. V.), and the other to those in naval war (No. XIII.).

There are very good grounds for this distinction between the law of war on land and that of naval war, based on the different circumstances in which they are respectively carried on.

In the case of war on land, the enemy is in the midst of the civil population of the invaded country, surrounded by its civic life, mixing of necessity with it for all the purposes of housing and feeding the invading forces. Where the invaded country is occupied, the native political superior is displaced, military laws are enforced by the invader, and the régime as a whole is a mixed one, which requires more or less minute determination as set out in The Hague Regulations.

In war at sea a different order of conditions prevails. Here none of the rules arising out of campment among a hostile population or out of the derangement of the civil or civic life of an invaded country have application at all.

The purpose of war on land is to defeat and capture the enemy's armed forces, and appropriate such public enemy property as can serve for its continuance. That of war at sea is to isolate the enemy country, and prevent it from deriving means to continue the struggle, either by conversion of merchant into war vessels, or by carriage from beyond seas, or by maritime communication within its own borders, to paralyze its trade, and hasten the conclusion of the war. This involves the capture of private enemy ships which are a means for the carriage of enemy supplies—*i.e.*, enemy cargoes on enemy ships—and, but for the power neutrals have acquired of asserting their interest, would involve the capture of enemy goods generally, and not only of contraband of war, found on neutral ships. Any assimilation of the land and the sea laws, it is seen, must be based on the fact that war on land and war at sea are carried on for purposes of a different character.

Even the law relating to postal communications is influenced by this different character. Thus in war on land a strict supervision over correspondence is a matter of vital importance to an army surrounded by a hostile population intently watching its movements. The same danger does not arise in

the case of mail-bags on the high sea. Nor is there any proposal to assimilate war on land to war at sea in this respect. It is provided in Convention No. XI. that even the official correspondence of belligerents is inviolable except where it comes from or is destined for a blockaded port. This is not the place to express doubts as to the wisdom of having ratified this provision. It has been ratified, and is binding on all the Parties to the war of 1914.

As regards prisoners in maritime war, it will be seen that they are not necessarily confined to belligerent forces, combatant or non-combatant, nor need they necessarily have been captured with an army which they were following as journalists, camp-followers, etc.<sup>1</sup> The captor in maritime war is entitled to treat as prisoners of war the officers and crew of captured enemy merchant vessels owing merely political allegiance to the enemy State.<sup>2</sup> They may be detained for the same reasons as those which may be put forward in justification of the capture of enemy ships and the enemy cargoes they carry.

The Convention covering the Regulations for the conduct of war on land is not confined to a mere recommendation that they should be adopted, but provides that the "Contracting Powers shall issue instructions to their armed land forces, which shall be in conformity with the Regulations respecting the Laws and Customs of War on Land annexed to the present Convention," and, moreover, that "the belligerent Party who shall violate the provisions of the said Regulations shall be bound,<sup>3</sup> if the case arises, to pay an indemnity. It shall be responsible for all acts done by persons forming part of its armed force."

As regards the principles which the Powers represented at The Hague Conferences have agreed should be observed by belligerents generally, including, of course, cases in which The Hague Conventions have given no precise indications for the conduct of warfare, the preamble to Convention No. IV.

<sup>1</sup> See Regulations for War on Land, Art. 13.

<sup>2</sup> See Hague Convention, No. XI., Art. 6.

<sup>3</sup> The word used in the text is *tenue*. The official translation gives "shall be *liable* to make compensation," which would leave a discretion to a determining authority not granted by the original text..

states that the interests of humanity, the requirements of civilization, and the desire to diminish the evils of war, so far as military necessities permit, are the underlying principle of the Regulations thereafter set out.

No margin, it is seen, is left for the case of military necessity within the scope of the Regulations themselves. The contracting Powers are *bound* to give their armed forces instructions in accordance with the Regulations (*q.v.*).<sup>1</sup> In a European war, however, where no powerful European Power is free to exercise an independent neutral influence, the observance of The Hague Conventions and Regulations, and of the dictates of natural law, humanity, and public conscience is solely dependent on the state of civilization of the belligerent Parties themselves.

Reduced to its simplest expression, war as between nations, after it has begun, is an effort on the part of the one to impose its will on the other. As between the armies, the object of the one is to force the other to surrender.

The one is the political aspect of war, the other the military.

In the present volume I do not deal with the political side of war or wars, and least of all with that of the present war, which seems devoid of any precise object or objects which can be ascribed to any of the Parties pitted against each other. The cause of the war—the Austro-Hungarian ultimatum to Servia—has all the appearance of a *querelle d'allemand*, as the French call a trumped-up quarrel forced without any alternative on the other side. In the course of the war some reason may be devised to account for it. Meanwhile one of the Parties to it seems to have revived with luxurious fulness all the practically obsolete horrors of warfare, the sacking of defenceless cities, personal reprisals, ransom, hostages, the very methods modern civilization was flattering itself had been banished from warfare, to which has even been added the new and supreme horror of laying floating mines on the high sea, the

<sup>1</sup> As the preamble states, military necessity was taken into account in the drafting of them. It treats them as a minimum, expressly stating that any case not therein provided for is not to be regarded as left to the belligerent commander's discretion, but remains governed by the "usage of civilized nations, the laws of humane conduct, and the exigencies of public conscience."

highway of mankind, and inflicting on neutrals as well as belligerents the most cruel and most cowardly method of carrying on hostilities yet devised by man.

The system which has been adopted on all sides of excluding the Press from the scene of war may have been necessary with a view to keeping the enemy in ignorance of the movements of the troops opposed to him, but it has had the deplorable result of opening the floodgates of conjecture and of a factitious excitement which may do ultimate harm. Many of our present judgments and much of our present indignation may have to be revised when the war is over. Meanwhile God grant that we may not be misled into imitation of the barbarism rightly or wrongly attributed to our enemies. The war is not one of our seeking, but one of unprovoked aggression by a foe who has forfeited his good name in order to gain an initial point over his more scrupulous adversaries; yet we must strive to avoid including the innocent with the guilty, and not condemn a whole nation for the acts of a section of it, or individuals for the sins of a nation, however difficult it may be to feel patient and judicial in spirit. We may feel sure that when this war is over, whether Germany is victor or vanquished, all the real culture of Germany will unite against those who have degraded the fair name of a great nation and will brand with infamy any who have made a nation's suffering as inglorious as murder and rapine.

While we form this judgment of our enemy, let us bear ourselves in mind that there is a law of war, that it has now been codified, that the Nations of the world have signed treaties giving effect to it, and that every violation of it is a disgrace to those who are guilty of such violation, that on the sanctity of contract and treaties rests all the moral structure of civilization, and that those who undermine that structure are the enemy, not of their adversaries only, but of all mankind.



# LAW AND USAGE OF WAR

## **ADMIRALTY PROCEDURE** under the Judicature Act, 1873.

(Sect. 35). "There shall be assigned to the Probate Divorce and Admiralty Division of the said High Court . . . all cases and matters which would have been within the exclusive cognizance . . . of the High Court of Admiralty if this Act had not passed."

Under the Orders made in pursuance of this Act:

(Order I., Rule 1). "All actions, which previously to the commencement of the Principal Act (Judicature Act, 1873) . . . were commenced by a cause . . . in the High Court of Admiralty . . . shall be instituted in the High Court of Justice by a proceeding to be called an action;"

(Order II., Rule 1). "Every action in the High Court shall be commenced by a writ of Summons."

See **PRIZE COURTS PROCEDURE**.

**AIRCRAFT.**—Military aircraft and airmen are bound by the rules that govern belligerents generally. To be distinguishable from spies and possess the rights of prisoners of war, airmen must conform to the provisions of The Hague Regulations, wear the uniform of their country, and act in accordance with the Laws and Usage of War. They are forbidden to drop bombs on undefended towns or villages.<sup>1</sup> In case of impending bombardment by an attacking force, it is the duty of the commanding officer to warn the authorities of the place thereof.<sup>2</sup> This applies to all the

<sup>1</sup> Regs., Art. 25.

<sup>2</sup> Regs., Art. 26.



**AIRCRAFT**—*continued*

attacking forces, including aircraft. In sieges and bombardments, precautions are strongly urged by The Hague Regulation to spare historic buildings, hospitals, and charitable institutions; the besieged authorities are recommended to indicate them by visible signs notified to the besiegers.<sup>1</sup> All this affects the besiegers' aircraft as part of the attacking force.

**AIRCRAFT.**—By Order of the Home Secretary, dated August 2, 1914, in pursuance of the powers conferred on him by the Aerial Navigation Acts, 1911 and 1913, the navigation of aircraft of every class and description over the whole area of the United Kingdom, and over the whole of the coast-line thereof and territorial waters adjacent thereto, was prohibited, the Order not, however, to apply to naval or military aircraft, or to aircraft flying under naval or military orders, nor to any aircraft flying within three miles of a recognized aerodrome.

See **BALLOONS** with reference to The Hague Declaration on the discharging of projectiles and explosives from balloons.

Hazeltine, "Law of the Air" (1911), and Spaight, "Aircraft in War," may be consulted with profit.

**ALABAMA CASE.** See **WASHINGTON RULES.**

**ALIENS, RESTRICTIONS ON.**—The Aliens Restriction Act, 1914, conferred power on His Majesty in time of war or imminent danger, or great emergency, by Order in Council to impose restrictions on aliens, and to make such provisions as necessary or expedient for carrying them into effect. In execution of this power an Order in Council was issued on August 5, 1914,<sup>2</sup> dealing fully with all probable emergencies connected with the landing of aliens and the

<sup>1</sup> Regs., Art. 27.

<sup>2</sup> See *London Gazette*, August 7, 1914.

**ALIENS, RESTRICTIONS ON—*continued***

registration of resident aliens, whether subjects or citizens of friendly or enemy States. Among other provisions, alien enemies are prohibited from travelling more than five miles from their registered address unless furnished with a permit; and a search warrant is authorized where information on oath is given that an enemy alien is in possession of—

- (a) Any firearms, ammunition, or explosives;
- (b) Any petroleum spirit, naphtha, benzol, petroleum, or other inflammable liquid in quantities exceeding 3 gallons;
- (c) Any apparatus or contrivance intended for or capable of being used for a signalling apparatus, either visual or otherwise;
- (d) Any carrier or homing pigeons;
- (e) Any motor-car, motor-cycle, or aircraft; or
- (f) Any cipher code or other means of conducting secret correspondence.

The penalty of contravention or failure to comply with the Order is a fine not exceeding £100, or imprisonment, with or without hard labour, for a term not exceeding six months, etc.

The Order in Council contains full details as to Approved Ports and the Prohibited Areas within which *all* aliens must be registered.

**ALLY.—See JOINT CAPTURE WITH ALLY; TRIPLE ALLIANCE.**

**ANALOGUES OF CONTRABAND** is a term which seems due to a translation of Gessner's "*Analoge Fälle der Contrabande.*"<sup>1</sup> It covers the cases of transport of belligerent

<sup>1</sup> "Das Recht des Neutralen Seehandels." Bremen, 1855, p. 48.

**ANALOGUES OF CONTRABAND**—*continued*

troops and belligerent despatches now dealt with in the *Declaration of London* (q.v.) under the heading of *Unneutral Service* (q.v.).

**ANGARY, RIGHT OF.**—This is the right of a belligerent in time of war to seize and apply any kind of property on belligerent territory.

See limitations to the right, Arts. 53 and 54 of the Regulations respecting the Laws and Customs of War on Land.

**ANNEXATION** in international practice has a precise meaning, distinguishable from a *sphere of influence*, which implies no sovereignty; *suzerainty*, which implies a controlling power over the vassal State; a *protectorate*, which places its external relations entirely under the direction of the protecting State. Annexation implies the complete displacement in the annexed territory of the Government by which it was previously ruled, and the substitution for it of that of the annexing State. The annexed territory becomes an integral part of the dominions of the annexing State, with all the consequences of subjection to the new sovereign. See **MILITARY OCCUPATION**.

**ARMED MERCHANT SHIPS.**—The arming of merchant ships for the purpose of self-defence in war time against the attack of enemy cruisers is quite distinguishable from privateering, and does not come under the application of The Hague Convention, 1907, No. VII., as to the conversion

**ARMED MERCHANT SHIPS**—*continued*

of merchant ships into warships. It would, however, only be lawful as between belligerents. The object of an enemy merchant-ship pursued by a belligerent cruiser is to escape from capture. The captain and crew are not in the same position as civilians in warfare on land, whose property, at least theoretically, is immune from capture, subject only to liability to be requisitioned against delivery of a *bon de réquisition* (*q.v.*) or receipt. Nevertheless, the argument might be used by an unscrupulous enemy that a civilian captain and crew are civilians, and that civilians who take part in warfare, even in self-defence, are liable to the penalties of irregular warfare. The decisions of British Prize Courts on the subject would not necessarily be precedents for the decisions of an enemy Prize Court.

**ARMISTICE.**—An armistice is an agreement by which the belligerent States consent to a temporary cessation of hostilities. It differs from a truce (*q.v.*), the term used for a local suspension of arms between two commanders in the field, in that it has a general character.<sup>1</sup>

The Hague War Regulations, however, use the word in both senses, distinguishing between them by adding the qualification of "general" or "local." It will save the reader from confusion if we follow the terminology of the Regulations. A "general armistice" can, of course, only be concluded by the Central Authorities. A "local armistice" may be arranged by the commanders on the spot.

A general armistice, say the Regulations, suspends all military operations of the belligerent States; a local one only those between certain fractions of the belligerent armies and within a fixed radius.<sup>2</sup>

<sup>1</sup> See in the official "Manual on Land Warfare" a number of different expressions which have been used in connection with agreed suspensions of hostilities. The French make the same distinction as ourselves, their terms for a truce being "*suspension d'armes*."

<sup>2</sup> Regs., Art. 37.

**ARMISTICE—continued**

It is for the Contracting Parties to settle, in the terms of the armistice, what communications may be held, on the theatre of war, with the population and with each other.<sup>1</sup>

It must be notified officially, and in good time, to the competent authorities and the troops. Hostilities are suspended immediately after the notification, or at a fixed date.<sup>2</sup>

If its duration is not fixed, the belligerent parties can resume operations at any time, provided always the enemy is warned within the time agreed upon, in accordance with the terms of the armistice.<sup>3</sup>

Any serious violation of the armistice by either of the parties to it gives the other party the right to denounce it, and even, in case of urgency, to recommence hostilities at once.<sup>4</sup>

A violation of its terms by private individuals acting on their own initiative only confers the right of demanding the punishment of the offenders, and, if necessary, an indemnity for the losses sustained.<sup>5</sup>

The terms agreed to by the Parties may include or not in the armistice naval operations. Thus, in the Russo-Japanese War the armistice concluded at Portsmouth (U.S.A.) on September 5, 1905, while suspending operations of bombardment by naval forces, did not suspend the right of capture between the Parties.

In practice white flags are hoisted simultaneously by the Parties at the beginning of the armistice, and lowered simultaneously at its conclusion.<sup>6</sup>

**ARMY (ANNUAL) ACT** is the name of the Act which provides for the discipline and regulation of the Army. Of

<sup>1</sup> Regs., Art. 39.

<sup>2</sup> Regs., Art. 38.

<sup>3</sup> Regs., Art. 36.

<sup>4</sup> Regs., Art. 40.

<sup>5</sup> Regs., Art. 41.

<sup>6</sup> See a full and well-composed treatment of the subject in the official "Manual on Land Warfare," pp. 56-66.

**ARMY (ANNUAL) ACT**—*continued*

itself it has no obligatory character, depending on the annual adoption of another Act which makes it operative. In this manner Parliament retains control over the discipline requisite for the management of the Army. These annual Acts also enable Parliament to amend the Army Act itself without the complications of making amendments in independent Acts. These, after adoption, are incorporated in the text of the Army Act, which is thus at all times a complete code of Army Regulations.

**ARMY COUNCIL.**—A Council founded in 1904, after the Boer War, to deal with the administration of the Army. The Letters Patent of February 6, 1904, creating the Council vested in it all the prerogative powers of the Crown, which had theretofore been exercised by the Secretary for War, the Commander-in-Chief, and other principal officials. By the Army (Annual) Act, 1909, powers of the Commander-in-Chief and the Adjutant-General were also transferred to the Council. It consists of seven members, four military and three civil—viz.: The Secretary of State for War; Chief of the Imperial General Staff; Adjutant-General to the Forces; Quartermaster-General to the Forces; Master-General of the Ordnance; Parliamentary Under-Secretary for War; and the Financial Secretary to the War Office.

**ARMY OF THE UNITED KINGDOM.**—It consists of—

(a) The Regular Forces, with their reserves, including the Special Reserve.

(b) The Territorial Force, including the Territorial Force Reserve.

Supplementary to the Army, but without definite liability for service unless otherwise undertaken, are—

**ARMY OF THE UNITED KINGDOM**—*continued*

(c) The Royal Military College, the Royal Military Academy, the Duke of York's Royal Military School, the Royal Hibernian Military School, and the Queen Victoria School.

(d) Officers' Training Corps.

(e) The National Reserve.

(f) Such categories of the Technical Reserve as are sanctioned by and are raised under the authority of the Army Council.

(g) Officially recognized cadet units.

For further information the following may be consulted: King's Regulations (1912); Manual of Military Law (1914); Army (Annual) Act; Reserve Forces Act, 1882; Reserve Forces Act, 1890; Reserve Forces and Militia Act, 1898; Reserve Forces Act, 1899; Reserve Forces Act, 1900; Reserve Forces Act, 1906; Territorial and Reserve Forces Act, 1907.

**ASPHYXIATING GASES.**—The employment of projectiles the object of which is the diffusion of such gases is forbidden by a special Declaration of The Hague Conference of 1899,<sup>1</sup> which has been ratified by all the States engaged in the war of 1914.

**ASSISTANCE, HOSTILE.** See **UNNEUTRAL SERVICE.**

**BALLOONS,** the discharge of projectiles and explosives from, was prohibited under a Hague Declaration in 1899, re-

<sup>1</sup> See p. 194.

**BALLOONS**—*continued*

adopted in 1907;<sup>1</sup> but Great Britain and the United States are the only Great Powers which have ratified it, and it is only binding as between ratifying Powers.

**BELGIUM, NEUTRALITY OF**, was first assured by a treaty dated November 15, 1831, and reaffirmed in another signed August 19, 1839, Art. 7 of which provided—

“Belgium . . . shall form an independent and perpetually neutral State. It shall be bound to observe such neutrality towards all other States.”

The signatories of the Treaty were Great Britain, France, Austria, Prussia, Russia, and Holland.

There is no specific guarantee by the Powers, as there is in the Treaty of May 11, 1867, ensuring the neutrality of Luxemburg (see **LUXEMBURG, NEUTRALITY OF**), but the articles agreed to, including the above, were “placed under the guarantee” of the said Powers.

**BELLIGERENT FORCES**.—These are the regular army and navy and irregular troops (*q.v.*) and the inhabitants of a territory not under occupation who spontaneously take up arms to resist invasion. See **LEVÉE EN MASSE, ARMY OF THE UNITED KINGDOM.**<sup>2</sup>

**BELLIGERENT OBLIGATIONS** in reference to neutrals are set out under **NEUTRALITY** (*q.v.*).

<sup>1</sup> See p. 195.

<sup>2</sup> See Art. 1 of Regs., p. 149.



**BILLETING.**—By a Royal Order, dated August 4, 1914, General or Field Officers were authorized to issue Billeting Requisitions, under Sect. 108A of the Army Act, which provides that where directions have been given for embodying all or any part of the Territorial Force, it shall be lawful for His Majesty, by Order distinctly stating that a case of emergency exists, and is signified by a Secretary of State, to authorize any General or Field Officer Commanding any part of His Majesty's Forces in any military district or place in the United Kingdom to issue a billeting requisition under his hand requiring chief officers of police to provide billets in such places and for such number of officers and soldiers and their horses, and for such period as may be specified in the requisition, in accordance with the provisions of the said Section.

**BILL OF HEALTH.** See **SHIP PAPERS.**

**BILL OF LADING.** See **SHIP PAPERS.**

**BILL OF SALE.** See **SHIP PAPERS.**

**BLACK SEA.** See **DARDANELLES.**

**BLOCKADE** is an operation of naval war which consists in stationing warships in such manner as to prevent traffic between the ports of an enemy and the open sea. Its ultimate object is to reduce the enemy to surrender by cutting off his supplies of every kind.

The Declaration of Paris (1856)<sup>1</sup> provides that a blockade to be binding on neutral Powers shall be effective. If it does not expose vessels making for the blockaded port to seizure, it evidently is not effective. The test, then, is the real ability to stop vessels. A blockade by vessels easily evaded would not be effective, and would therefore not be binding. In other words, a neutral vessel captured by a blockading force which had failed to stop a certain number of others may be held to have been captured improperly.

Effectiveness is a matter of conclusion from facts. "Only such blockades as shall be duly proclaimed and maintained by adequate force, in conformity with the law of nations, will be observed and respected by the United States," wrote Mr. Seward, United States Secretary of State, to Mr. Sullivan, Minister to Columbia, in 1867 (June 13). If the neutral and belligerent States in question do not agree about the facts, or do not agree as to whether the admitted facts constitute "effectiveness," an international difference at once arises.

As regards the requisite notice, the following provisions in the instructions given to the United States blockading vessels and cruisers in June, 1898, sum up the latest Anglo-Saxon practice:

"Neutral vessels are entitled to notification of a blockade before they can be made prize for its attempted violation. The character of this notification is not material. It may be actual, as by a vessel of the blockading force, or *constructive*, as by a proclamation of the Government maintaining the blockade, or by common notoriety. If a neutral vessel can be shown to have had notice of the blockade in any way, she is good prize, and should be sent in for adjudication; but should formal notice not have been given, the rule of constructive knowledge arising from notoriety should be construed in a manner liberal to the neutral.

"Vessels appearing before a blockaded port, having sailed

<sup>1</sup> See **DECLARATION OF PARIS** in full, p. 145.

**BLOCKADE—continued**

without notification, are entitled to actual notice by a blockading vessel. They should be boarded by an officer, who should enter in the ship's log the fact of such notice, such entry to include the name of the blockading vessel giving notice, the extent of the blockade, the date and place, verified by his official signature. The vessel is then to be set free; and should she again attempt to enter the same or any other blockaded port as to which she has had notice, she is good prize.

"Should it appear from a vessel's clearance that she sailed after notice of blockade had been communicated to the country of her port of departure, or *after the fact of blockade had, by a fair presumption, become commonly known* at that port, she should be sent in as a prize."

The passages in italics are not in accordance with the views held by other States which do not recognize the binding character of a diplomatic notification or of constructive notice from notoriety. The grounds in favour of the Anglo-Saxon practice are at the present day strengthened by the fact that it is now practically impossible to remain ignorant of a general notice of blockade in any port of the world.

The subject of the international regulation of blockade was brought up at the second Hague Conference. The Italian and Mexican delegates submitted projects, but after a declaration by the British delegate in charge of the subject (Sir E. Satow) that, blockade not having been one of the subjects included in the Russian programme, his Government had given him no instructions upon it, the subject, at his request, was dropped.

It was taken up again, however, at the Conference of London, 1908-09, and the rules adopted at that Conference<sup>1</sup> have now been made operative for the duration of the war of 1914 by an Order in Council, dated August 20, 1914,<sup>2</sup> subject to certain modifications as regards blockade, which are evidently intended to bring the London Rules as much as possible into harmony with both British and French practice. The addition made as regards blockade<sup>3</sup> is explanatory of the British rule of constructive notice.

<sup>1</sup> See **DECLARATION OF LONDON**, and text of Declaration, p. 196.

<sup>2</sup> See p. 213.

<sup>3</sup> See p. 214.

**BLOCKADE**—*continued*

It leaves the Continental practice as set out in Art. 16, respecting individual notice, intact, and mere notoriety will not be regarded as sufficient to support a presumption of knowledge.

The penalty for breach of the blockade is confiscation of the ship and of the cargo, unless the consignor "was not or could not be aware of the intention to break the blockade."<sup>1</sup>

The rules as to blockade as settled by Order in Council for the war of 1914 are as follows:

ART. 1.—A blockade must not extend beyond the ports and coasts belonging to or occupied by the enemy.

ART. 2.—In accordance with the Declaration of Paris of 1856 a blockade, in order to be binding, must be effective—that is to say, it must be maintained by a force sufficient really to prevent access to the enemy coast-line.

ART. 3.—The question whether a blockade is effective is a question of fact.

ART. 4.—A blockade is not regarded as raised if the blockading force is temporarily withdrawn on account of stress of weather.

ART. 5.—A blockade must be applied impartially to the ships of all nations.

ART. 6.—The commander of a blockading force may give permission to a warship to enter, and subsequently to leave, a blockaded port.

ART. 7.—In circumstances of distress, acknowledged by an officer of the blockading force, a neutral vessel may enter a place under blockade and subsequently leave it, provided that she has neither discharged nor shipped any cargo there.

ART. 8.—A blockade, in order to be binding, must be declared in accordance with Article 9, and notified in accordance with Articles 11 and 16.

ART. 9.—A declaration of blockade is made either by the blockading Power or by the naval authorities acting in its name.

It specifies—

- (1) The date when the blockade begins;
- (2) The geographical limits of the coast-line under blockade;
- (3) The period within which neutral vessels may come out.

ART. 10.—If the operations of the blockading Power, or of the naval authorities acting in its name, do not tally with the

<sup>1</sup> See **DECLARATION OF LONDON**, Art. 21, p. 201.

**BLOCKADE**—*continued*

particulars, which, in accordance with Article 9 (1) and (2), must be inserted in the declaration of blockade, the declaration is void, and a new declaration is necessary in order to make the blockade operative.

ART. 11.—A declaration of blockade is notified—

- (1) To neutral Powers, by the blockading Power by means of a communication addressed to the Governments direct, or to their representatives accredited to it;
- (2) To the local authorities, by the officer commanding the blockading force. The local authorities will, in turn, inform the foreign consular officers at the port or on the coast-line under blockade as soon as possible.

ART. 12.—The rules as to declaration and notification of blockade apply to cases where the limits of a blockade are extended, or where a blockade is re-established after having been raised.

ART. 13.—The voluntary raising of a blockade, as also any restriction in the limits of a blockade, must be notified in the manner prescribed by Article 11.

ART. 14.—The liability of a neutral vessel to capture for breach of blockade is contingent on her knowledge, actual or presumptive, of the blockade.

ART. 15.—Failing proof to the contrary, knowledge of the blockade is presumed if the vessel left a neutral port subsequently to the notification of the blockade to the Power to which such port belongs, provided that such notification was made in sufficient time.

*The existence of a blockade shall be presumed to be known—*

- (a) *To all ships which sailed from or touched at an enemy port a sufficient time after the notification of the blockade to the local authorities to have enabled the enemy Government to make known the existence of the blockade.*
- (b) *To all ships which sailed from or touched at a British or allied port after the publication of the declaration of blockade.<sup>1</sup>*

ART. 16.—If a vessel approaching a blockaded port has no knowledge, actual or presumptive, of the blockade, the notification must be made to the vessel itself by an officer of one of the ships of the blockading force. This notification should be entered in the vessel's logbook, and must state the day and hour, and the geographical position of the vessel at the time.

If through the negligence of the officer commanding the blockading force no declaration of blockade has been notified

<sup>1</sup> This is the clause which has been added by the Order in Council to the articles of the **DECLARATION OF LONDON**.

**BLOCKADE**—*continued*

to the local authorities, or if in the declaration, as notified, no period has been mentioned within which neutral vessels may come out, a neutral vessel coming out of the blockaded port must be allowed to pass free.

ART. 17.—Neutral vessels may not be captured for breach of blockade except within the area of operations of the warships detailed to render the blockade effective.

ART. 18.—The blockading forces must not bar access to neutral ports or coasts.

ART. 19.—Whatever may be the ulterior destination of a vessel or of her cargo, she cannot be captured for breach of blockade if, at the moment, she is on her way to a non-blockaded port.

ART. 20.—A vessel which has broken blockade outwards, or which has attempted to break blockade inwards, is liable to capture so long as she is pursued by a ship of the blockading force. If the pursuit is abandoned, or if the blockade is raised, her capture can no longer be effected.

ART. 21.—A vessel found guilty of breach of blockade is liable to condemnation. The cargo is also condemned, unless it is proved that at the time of the shipment of the goods the shipper neither knew nor could have known of the intention to break the blockade.

**BOMBARDMENT.**—*In operations by land forces*, the following provisions dealing with bombardments are made in The Hague Regulations for the conduct of war (1907):

ART. 25.—The attack or bombardment, by any means whatever, of towns, villages, habitations, or buildings which are not defended, is prohibited.

ART. 26.—The commander of an attacking force, before commencing a bombardment, except in the case of an assault, should do all he can to warn the authorities.

ART. 27.—In sieges and bombardments all necessary steps should be taken to spare as far as possible edifices devoted to religion, art, science, and charity, hospitals, and places where the sick and wounded are collected, provided they are not used at the same time for military purposes.

The besieged should indicate these buildings or places by some particular and visible signs, which should previously be notified to the assailants.<sup>1</sup>

<sup>1</sup> See Regulations in full, p. 149.

**BOMBARDMENT**—*continued*

*In operations by naval forces*, the provisions of The Hague Convention, No. IX. (1907), forbid the bombarding by naval forces of undefended ports, towns, villages, habitations, or buildings. Nor may a place be bombarded for the sole reason that submarine automatic contact mines are moored in front of its port (Art. 1).<sup>1</sup>

This does not, however, apply to military works, military or naval establishments, depots of arms or war material, workshops or installations suitable to be used for the requirements of the enemy's army or fleet, and war vessels in the port. The commander of a naval force may, after summons with a reasonable delay, destroy them by cannon if no other means are possible, and when the local authorities shall not have proceeded to their destruction within the delay fixed.

In this case he incurs no responsibility for involuntary damage which may be occasioned by the bombardment.

"If military necessity, requiring immediate action, does not admit of any delay, it remains understood that the prohibition to bombard an undefended town continues . . . and that the commander will take all the desired precautions to occasion the least possible inconvenience to the town" (Art. 2).

After express notice, bombardment of undefended ports, towns, villages, habitations, or buildings may be proceeded with if the local authorities, having received formal notice, refuse to comply with requisitions for food or supplies required for the immediate wants of the naval force facing the place.

These requisitions must be in proportion to the resources of the place. They must not be demanded without the authority of the commander of the naval force, and, as far as possible, must be paid for in cash; if not, they must be acknowledged by receipts (Art. 3).

"The bombardment of undefended ports, towns, villages, habitations, or buildings for non-payment of money contributions is forbidden" (Art. 4).

<sup>1</sup> See reservations of Great Britain, France, Germany, and Japan on this subject, p. 62.

**BOMBARDMENT**—*continued*

" In a bombardment by naval forces, all necessary steps should be taken by the commander to spare, as far as possible, buildings devoted to worship, art, science, and charity, historic monuments, hospitals, and places for the reception of sick or wounded, provided they are not at the same time used for military purposes.

" It is the duty of the inhabitants to indicate these monuments, buildings, or places by distinctive signs, which shall consist of large rectangular rigid screens, divided at one of the diagonals into two triangles, black above and white below " (Art. 5).

Unless military exigencies prevent it, the commander of the attacking naval force should, before commencing the bombardment, do everything in his power to warn the authorities (Art. 6).

*Operations by Aircraft* are bound by the rules relating to bombardment. If carried on by craft belonging to land forces, The Hague Regulations for the conduct of war are binding on them. If carried on by craft belonging to naval forces, they are subject to Hague Convention, No. IX.

**BONS DE RÉQUISITION** are receipts given by the invading commanders in lieu of payment for supplies requisitioned from private persons, individually or collectively, on invaded territory. See Regs., Art. 53, p. 158.

**CABLES, SUBMARINE.** Art. 54 of The Hague Regulations for war on land forbids the seizure or destruction of submarine cables connecting occupied with neutral territory, except in case of absolute necessity. This does not apply to naval warfare. See text of the article, p. 158.



**CAPTIVE.** See **PRISONER OF WAR.**

**CAPTOR.**—Any person taking or seizing, or having taken or seized, any ship or goods as prize is described as the captor.

**CAPTURE** is the taking possession by a belligerent ship of an enemy ship, or of a neutral ship carrying contraband of war, disregarding a blockade or otherwise contravening the law of neutrality.

If the capture of a vessel or of goods is not upheld by the Prize Court, or if the prize is released without any judgment being given, the parties interested have the right to compensation, unless there were good reasons for capturing the vessel or goods (Declaration of London, Art. 64).

**CAPTURE, JOINT, WITH ALLY.** See **PRIZE; NEUTRALITY.**

**CARTEL.**—An agreement between belligerents to enable them to communicate with one another during hostilities, where it may be in the common interest to do so, usually, however, confined in practice to naval war. See **CARTEL SHIP.**

**CARTEL SHIP.**—A ship used for the liberation or exchange of prisoners, for the conveyance of messengers, truce-bearers, etc. They are exempt from capture. See **PRIZE**.

**CASUS BELLI.**—A case in which war is regarded as the only method of solution failing acceptance of alternative final terms. The exception of "vital interests" and "national honour" from the scope of most compulsory treaties of arbitration places them among eventual *casus belli*. Occurrences affecting the dignity, integrity, or independence of States are typical instances of national honour and vital interests.

**CASUS FOEDERIS** is a term used in diplomacy to describe the occasion or occasions which bring into operation the obligations of a treaty of alliance (*foedus*).

It may be a matter of doubt in the case of an alliance between more than two Powers whether a *casus foederis* has arisen. In the case of the Triple Alliance, Germany sent an ultimatum to Russia, and declared war on her. On the other hand, it was France and Great Britain who declared war on Austria. In both cases the States declaring war alleged that they did so in self-defence against acts of aggression.

It may be difficult, moreover, to distinguish between an aggressive and a defensive war. Mobilization may have an aggressive or a defensive object. Whether it has the one or the other depends on circumstances which are not always well defined. Germany, in the war of 1914, declared that the Russian mobilization forced her into counter-mobilization, and that her army being inferior in number to that of Russia, she was forced to make up for this inferiority by the greater speed of her attack.

**CASUS FOEDERIS**—*continued*

In such emergencies it rests with the allied Power to decide whether a *casus foederis* has arisen, and in case of doubt it is certain to be guided by what its Government regards as the greater national interest.

**CHAPLAINS.** See **MEDICAL PERSONNEL.**

**CHARTER PARTY.** See **SHIP PAPERS.**

**CIVILIANS, HOSTILITIES BY,** are punishable by the enemy as crimes of war (*q.v.*). See, however, **LEVÉE EN MASSE.**

**CIVILIANS, POSITION OF.**—According to the British view the first consequence of the existence of a condition of war between two States is that every subject of the one State becomes an enemy to every subject of the other. For it is impossible to sever the subjects from their State, and the outbreak of war between two States cannot but make their subjects enemies. It is, however, a universally recognized rule of International Law that hostilities are restricted to the armed forces of the belligerents, and that the ordinary citizens of the contending States who do not take up arms and who abstain from hostile acts, must be treated leniently, must not be injured in their lives or liberty, except for cause or after due trial, and must not as a rule be deprived of their private property.<sup>1</sup> See **CONTRACTS WITH ENEMY SUBJECTS; TRADING WITH ENEMY.**

<sup>1</sup> "Official Manual of Land Warfare," Sect. 11.

**CIVILIANS, PUNISHMENT OF.** No general penalty, pecuniary or otherwise, may be inflicted on the population on account of the acts of individuals for which it cannot be regarded as collectively responsible.<sup>1</sup>

**CLEARANCE.** See **SHIP PAPERS.**

**COAL.** See **CONTRABAND** (fuel), p. 29, see also p. 26. Under a Proclamation dated August 5, 1914, the exportation of "steam coal, large," to other than France, Russia, Spain, Portugal, and Belgium (subsequently added), was forbidden. By a Proclamation dated August 20, this item was deleted from the prohibition.

**COLOURED TROOPS.**—Troops formed of coloured individuals belonging to savage tribes and barbarous races should not be employed in a war between civilized States. The enrolling, however, of individuals belonging to civilized coloured races and the employment of whole regiments of disciplined coloured soldiers, such as the Indian Army, the African troops of the French Army, and the negro regiments of the United States Army, is not forbidden.<sup>2</sup>

**COMBATANTS.** See **BELLIGERENT FORCES.**<sup>3</sup>

<sup>1</sup> "Official Manual of Land Warfare," Sect. 50.

<sup>2</sup> *Ibid.*, Sect. 38

<sup>3</sup> *Ibid.*, Sect. 3.

**COMPENSATION FOR ILLEGAL CAPTURE.** See **CAPTURE.**

**CONGO BASIN.** See **NEUTRALIZED AREA.**

**CONQUEST, RIGHT OF,** is the right to recognition of the *de facto* result of a war which has been followed by the imposition of the sovereignty of the conquering State.

**CONTINUOUS VOYAGE.**—Trade between neutrals has a *prima facie* right to go on, in spite of war, without molestation. But if the ultimate destination of goods, though shipped first to a neutral port, is enemy's territory, then, according to the doctrine of "continuous voyage," the goods may be treated as if they had been shipped to the enemy's territory direct. The doctrine is entirely Anglo-Saxon in its origin and development. Only in one case does it seem ever to have been actually put in force by a foreign Prize Court—namely, in the case of the *Doelwijk*, a Dutch vessel which was adjudged good prize by an Italian Court on the ground that, although bound for Djibouti, a French port, it was laden with a provision of arms of a model which has gone out of use in Europe, and could only be destined for Abyssinia, with whom Italy was at war.

During the Boer War the doctrine gave rise to controversy with Germany, who at first declined to recognize the existence of any rule which could interfere with trade

**CONTINUOUS VOYAGE**—*continued*

between neutrals, the German vessels in question having been stopped on their way to a neutral port. Prince von Bülow, in his explanatory speech in the Reichstag of January 19, 1900, however, qualified his protest. "I should wish," he said, "to take this opportunity of observing that we strove from the outset to induce the English Government, in dealing with neutral vessels consigned to Delagoa Bay, to adhere to that theory of International Law which guarantees the greatest security for the principle that for ships, consigned from a neutral State to a neutral port, the notion of contraband of war does not exist. To this the English Government demurred. We have not insisted, but reserved to ourselves the right of raising this question in the future, on the one hand, because it was essential to us to arrive at an expeditious solution of the pending difficulty, and, on the other, because, in point of fact, the principle, here set up by us, has not yet met with universal recognition in theory and practice."

The word "continuous," of course, implies that the transportation is a single mercantile transaction, and intended to be so from the outset.

Under the Declaration of London the doctrine is made applicable to absolute contraband of war exclusively, and whether the carriage of the goods is direct or entails transshipment or subsequent transport by land.

Conditional contraband, on the other hand, is only liable to capture on board a vessel . . . which is not to discharge it at an intervening neutral port.<sup>1</sup> The Order in Council making the Declaration operative for the duration of the war of 1914 makes it liable to capture for whatever port the ship is bound, and at whatever port the cargo is to be discharged, if it is shown to be destined for the use of the armed forces or of a Government department of the enemy State,<sup>2</sup> or to or for an agent of the enemy State, or to or for a merchant or other person under the control of the authorities of the enemy State.<sup>3</sup>

<sup>1</sup> Art. 35.

<sup>2</sup> Art. 33.

<sup>3</sup> Order in Council, August 20, 1914, see p. 213.

**CONTRABAND OF WAR.**—International Law forbids neutrals to do certain things for the benefit of a belligerent. Among these are the supply of articles of direct or indirect help to him in the prosecution of the war.

"There are still disputes," says Grotius, "as to what may lawfully be done to those who are not our enemies, nor are willing to be thought so, and yet furnish our enemies with supplies. This is a point which has been sharply contested, both in ancient and modern times, some maintaining the extreme right of war, others the freedom of commerce. In the first place, we must distinguish between the things themselves, for there are some things which are of use only in war, as arms; others which are no use in war, but serve only for pleasure; others which are useful both in war and peace, as money, provisions, ships, and their appurtenances."

Grotius approves of forbidding neutrals to supply the enemy with articles of the first kind, and of permitting traffic in articles of the second kind. As regards the third kind, those which are of use, both in time of war and in time of peace (*usus ancipitis*), he makes a distinction: "For if I cannot protect myself unless I intercept what is sent, necessity will give me a right to intercept it, but under the obligation of restitution, except there be cause to the contrary. But if the supplying of the articles will impede the execution of my design, and he who transports them might have known this fact—as, for instance, if I am besieging a town or blockading a port, and a surrender or a peace is daily expected, he will be liable to me for damages, and his property may be taken to satisfy them. If he has not done the damage, but is only attempting to do it, his property may be detained until he gives security for the future; but if the injustice of my enemy be very clear, and the supplies conveyed to him support him in his unjust war, then shall the party who conveys them to my enemy be not only liable to repair my loss, but he may be treated as a criminal, as one who is rescuing a notorious offender from impending judgment; and for this reason it will be lawful for me to deal with him according to his

**CONTRABAND OF WAR**—*continued*

offence, and for the purpose of punishment I may deprive him of his merchandise" ("De Jure Belli et Pacis," lib. iii., c. i, s. 5).

International law still recognizes the distinctions laid down by Grotius, the first kind being known as "absolute contraband," and third as "conditional contraband."

It has therefore been usual for Governments at the outbreak of war to issue lists of absolute and of conditional contraband, which also affords neutrals an opportunity of protesting against the inclusion of any article, if need be. The Declaration of London went further than this, and adopted a third list of articles which are never to be declared contraband. Among them, rather inconsistently, figures "raw cotton," a concession to England.<sup>1</sup> As the Drafting Committee's Report states, moreover, this *Free List* is not exclusive, but merely indicative.

There has been a strong movement on the Continent in favour of abolishing conditional contraband. Moved by the desire to distinguish unmistakable from, so to speak, constructive contraband, and to protect trade against the vexation of uncertainty, many Continental jurists have come to argue it away altogether. There are, however, signs of a change of opinion, judging by the discussions on the subject in the Institute of International Law, a body exclusively composed of recognized International Jurists. The rules this body adopted in 1896, though they do not represent the unanimous feeling of its members, may be taken as the opinion of a large proportion of them. In any case the majority comprised German, Danish, Italian, Dutch, and French specialists. The rules contain a clause which, after declaring conditional contraband abolished, states that—

"Nevertheless, the belligerent has, at his option and on condition of paying an equitable indemnity, a *right of sequestration or pre-emption* as to articles (*objets*) which, on their way to a port of the enemy, may serve equally in war or in peace."

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<sup>1</sup> See **DECLARATION OF LONDON**, Art. 28.



**CONTRABAND OF WAR—continued**

Great Britain, on her side, has long and consistently held that provisions and liquors fit for the consumption of the enemy's naval or military forces are contraband. Her law, however, already provides the very palliative, in the case of "naval or victualling stores," for the penalty attaching to absolute contraband, proposed by the Institute, the Lords of the Admiralty being entitled to exercise a right of *pre-emption* over such stores—i.e., to purchase them without condemnation in a Prize Court.<sup>1</sup>

As regards foodstuffs, the question of their inclusion among contraband was revived in 1885, when in the course of the French hostilities against China the French Government announced that it intended to treat as contraband all shipments of rice destined for the open ports north of Canton. M. Ferry, the French Foreign Minister, in a despatch on the subject, stated that the French Government had received information that large quantities of rice were being forwarded to the northern ports of China, and that the stoppage of these would materially influence the Peking Government. The British Ambassador in China refused to recognize any such right of stoppage, but his Government stated that though it would not resist the seizure of rice by physical force, its legality must be determined by the French Prize Courts, subject to ulterior diplomatic action. The preliminaries of peace, however, were settled before any shipments were seized.

In the Russo-Japanese War, Russia's claim to include rice and provisions and coal as absolute contraband, and later on cotton as conditional contraband, gave rise to a controversy with the British Government, which resulted in an alteration of the Russian rules, and the explanation that the prohibition of cotton applied only to raw cotton suitable for the manufacture of explosives.<sup>2</sup>

As regards *coal*, there is no essential difference between the position of coal to feed ships and provisions to feed men. Neither are *per se* contraband.

<sup>1</sup> See **PRE-EMPTION**.

<sup>2</sup> See Barclay, "Problems of International Practice and Diplomacy," p. 95—a full account of this controversy.

**CONTRABAND OF WAR**—*continued*

In 1898 the Foreign Office replied to an inquiry of the Newport Chamber of Commerce on the position of coal that—"Whether in any particular case coal is or is not contraband of war is a matter *prima facie* for the determination of the Prize Court of the captor's nationality, and so long as such decision, when given, does not conflict with well-established principles of International Law, Her Majesty's Government will not be prepared to take exception thereto."

At the West African Conference in 1884 the Russian representative protested against its inclusion among contraband articles, but the Russian Government included it in her declaration as to contraband on the outbreak of the Russo-Japanese War.

In reply to an observation on the part of Lord Lansdowne as to this change of view, Count Lamsdorff stated that—"it was permissible for the Russian Government to change their views since 1884, during which time many developments and circumstances had occurred which had induced them to modify their opinion. At the commencement of a war every belligerent had hitherto exercised the right of announcing what would be considered as contraband of war, and the list of such articles necessarily varied with the resources of the adversary. Such a right hitherto enjoyed by other Powers could not well be denied to Russia, and the fact that His Majesty's Government had refused to allow coal to be given to the Russian fleet in British harbours proved conclusively that they also regarded coal as contraband of war."<sup>1</sup>

The Declaration of London, however, has not only maintained the distinction between absolute and contraband both *foodstuffs* and *coal*, and, as has been seen above, has placed *raw cotton* on the Free List.

Though the Declaration of London has not been ratified, the British Government has now put it in force by Order in Council, dated August 22, 1914, for the duration of the war of 1914, the French and Russian Governments having

<sup>1</sup> Sir C. Hardinge, September 1, 1904.

**CONTRABAND OF WAR—continued**

determined to observe its principles, subject to several additions and alterations adopted by the Allies.

The Rules at present governing contraband under the Declaration of London, coupled with the above-mentioned Order in Council, are therefore as follows:

ART. 22.—The following articles may, without notice, be treated as contraband of war, under the name of absolute contraband:

- (1) Arms of all kinds, including arms for sporting purposes, and their distinctive component parts.
- (2) Projectiles, charges, and cartridges of all kinds, and their distinctive component parts.
- (3) Powder and explosives specially prepared for use in war.
- (4) Gun-mountings, limber boxes, limbers, military waggons, field forges, and their distinctive component parts.
- (5) Clothing and equipment of a distinctively military character.
- (6) All kinds of harness of a distinctively military character.
- (7) Saddle, draught, and pack animals suitable for use in war.
- (8) Articles of camp equipment, and their distinctive component parts.
- (9) Armour plates.
- (10) Warships, including boats, and their distinctive component parts of such a nature that they can only be used on a vessel of war.
- (11) *Aeroplanes, airships, balloons, and aircraft of all kinds, and their component parts, together with accessories and articles recognizable as intended for use in connection with balloons and aircraft.*<sup>1</sup>
- (12) Implements and apparatus designed exclusively for the manufacture of munitions of war, for the manufacture or repair of arms, or war material for use on land or sea.

ART. 23.—Articles exclusively used for war may be added to the list of absolute contraband by a declaration, which must be notified.

Such notification must be addressed to the Governments of other Powers, or to their representatives accredited to the

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<sup>1</sup> The item in italics has been added by the Order in Council to the absolute list by transfer from the conditional list (see below) of the **DECLARATION OF LONDON.**

**CONTRABAND OF WAR—continued**

Power making the declaration. A notification made after the outbreak of hostilities is addressed only to neutral Powers.

ART. 24.—The following articles, susceptible of use in war as well as for purposes of peace, may, without notice, be treated as contraband of war, under the name of conditional contraband:

- (1) Foodstuffs.
- (2) Forage and grain, suitable for feeding animals.
- (3) Clothing, fabrics for clothing, and boots and shoes, suitable for use in war.
- (4) Gold and silver in coin or bullion, paper money.
- (5) Vehicles of all kinds available for use in war, and their component parts.
- (6) Vessels, craft, and boats of all kinds, floating docks, parts of docks, and their component parts.
- (7) Railway material, both fixed and rolling-stock, and material for telegraphs, wireless telegraphs, and telephones.
- (8) *Balloons and flying machines and their distinctive component parts, together with accessories and articles recognisable as intended for use in connection with balloons and flying machines.<sup>1</sup>*
- (8) Fuel, lubricants.
- (9) Powder and explosives not specially prepared for use in war.
- (10) Barbed wire and implements for fixing and cutting the same.
- (11) Horseshoes and shoeing materials.
- (12) Harness and saddlery.
- (13) Field-glasses, telescopes, chronometers, and all kinds of nautical instruments.

ART. 25.—Articles susceptible of use in war as well as for purposes of peace, other than those enumerated in Articles 22 and 24, may be added to the list of conditional contraband by a declaration, which must be notified in the manner provided for in the second paragraph of Article 23.

ART. 26.—If a Power waives, so far as it is concerned, the right to treat as contraband of war an article comprised in any of the classes enumerated in Articles 22 and 24, such intention shall be announced by a declaration, which must be

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<sup>1</sup> The item in italics, which figures as item (8) of conditional contraband in the **DECLARATION OF LONDON**, it has been seen, is transferred, with verbal changes, by the Order in Council to absolute contraband, where it figures as item (11), see p. 28.

**CONTRABAND OF WAR**—*continued*

notified in the manner provided for in the second paragraph of Article 23.

ART. 27.—Articles which are not susceptible of use in war may not be declared contraband of war.

ART. 28.—The following may not be declared contraband of war:

- (1) Raw cotton, wool, silk, jute, flax, hemp, and other raw materials of the textile industries, and yarns of the same.
- (2) Oil seeds and nuts; copra.
- (3) Rubber resins, gums, and lacs; hops.
- (4) Raw hides and horns, bones, and ivory.
- (5) Natural and artificial manures, including nitrates and phosphates for agricultural purposes.
- (6) Metallic ores.
- (7) Earths, clays, lime, chalk, stone, including marble, bricks, slates, and tiles.
- (8) Chinaware and glass.
- (9) Paper and paper-making materials.
- (10) Soap, paint, and colours, including articles exclusively used in their manufacture, and varnish.
- (11) Bleaching powder, soda ash, caustic soda, salt cake, ammonia, sulphate of ammonia, and sulphate of copper.
- (12) Agricultural, mining, textile, and printing machinery.
- (13) Precious and semi-precious stones, pearls, mother-of-pearl, and coral.
- (14) Clocks and watches, other than chronometers.
- (15) Fashion and fancy goods.
- (16) Feathers of all kinds, hairs, and bristles.
- (17) Articles of household furniture and decoration; office furniture and requisites.

ART. 29.—Likewise the following may not be treated as contraband of war:

- (1) Articles serving exclusively to aid the sick and wounded. They can, however, in case of urgent military necessity, and subject to the payment of compensation, be requisitioned, if their destination is that specified in Article 30.
- (2) Articles intended for the use of the vessel in which they are found, as well as those intended for the use of her crew and passengers during the voyage.

ART. 30.—Absolute contraband is liable to capture if it is shown to be destined to territory belonging to or occupied by the enemy, or to the armed forces of the enemy. It is

**CONTRABAND OF WAR—continued**

immaterial whether the carriage of the goods is direct or entails transshipment or a subsequent transport by land.

ART. 31.—Proof of the destination specified in Article 30 is complete in the following cases:

- (1) When the goods are documented for discharge in an enemy port, or for delivery to the armed forces of the enemy;
- (2) When the vessel is to call at enemy ports only, or when she is to touch at an enemy port or meet the armed forces of the enemy before reaching the neutral port for which the goods in question are documented.

ART. 32.—Where a vessel is carrying absolute contraband, her papers are conclusive proof as to the voyage on which she is engaged, unless she is found clearly out of the course indicated by her papers and unable to give adequate reasons to justify such deviation.

ART. 33.—Conditional contraband is liable to capture if it is shown to be destined for the use of the armed forces or of a government department of the enemy State, unless in this latter case the circumstances show that the goods cannot in fact be used for the purposes of the war in progress. This latter exception does not apply to a consignment coming under Article 24 (4).

ART. 34.—The destination referred to in Article 33 is presumed to exist if the goods are consigned to enemy authorities, or to a contractor established in the enemy country who, as a matter of common knowledge, supplies articles of this kind to the enemy. A similar presumption arises if the goods are consigned to a fortified place belonging to the enemy, or other place serving as a base for the armed forces of the enemy. No such presumption, however, arises in the case of a merchant vessel bound for one of these places if it is sought to prove that she herself is contraband.

In cases where the above presumptions do not arise, the destination is presumed to be innocent.

The presumptions set up by this Article may be rebutted.

*The destination referred to in Article 33 may be inferred from any sufficient evidence, and (in addition to the presumption laid down in Article 34) shall be presumed to exist if the goods are consigned to or for an agent of the enemy State, or to or for a merchant or other person under the control of the authorities of the enemy State.<sup>1</sup>*

ART. 35.—Conditional contraband is not liable to capture, except when found on board a vessel bound for territory be-

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<sup>1</sup> This is an addition made by the Order in Council.

**CONTRABAND OF WAR—continued**

longing to or occupied by the enemy, or for the armed forces of the enemy, and when it is not to be discharged in an intervening neutral port.

The ship's papers are conclusive proof both as to the voyage on which the vessel is engaged and as to the port of discharge of the goods, unless she is found clearly out of the course indicated by her papers, and unable to give adequate reasons to justify such deviation.

*Notwithstanding the above provisions, conditional contraband, if shown to have the destination referred to in Article 33, is liable to capture to whatever port the vessel is bound and at whatever port the cargo is to be discharged.<sup>1</sup> (See **CONTINUOUS VOYAGE.**)*

ART. 36.—Notwithstanding the provisions of Article 35, conditional contraband, if shown to have the destination referred to in Article 33, is liable to capture in cases where the enemy country has no seaboard.

ART. 37.—A vessel carrying goods liable to capture as absolute or conditional contraband may be captured on the high seas or in the territorial waters of the belligerents throughout the whole of the voyage, even if she is to touch at a port of call before reaching the hostile destination.

ART. 38.—A vessel may not be captured on the ground that she has carried contraband on a previous occasion if such carriage is in point of fact at an end.

ART. 39.—Contraband goods are liable to condemnation.

ART. 40.—A vessel carrying contraband may be condemned if the contraband, reckoned either by value, weight, volume, or freight, forms more than half the cargo.

ART. 41.—If a vessel carrying contraband is released, she may be condemned to pay the costs and expenses incurred by the captor in respect of the proceedings in the national Prize Court and the custody of the ship and cargo during the proceedings.

ART. 42.—Goods which belong to the owner of the contraband and are on board the same vessel are liable to condemnation.

ART. 43.—If a vessel is encountered at sea while unaware of the outbreak of hostilities or of the declaration of contraband which applies to her cargo, the contraband cannot be condemned except on payment of compensation; the vessel herself and the remainder of the cargo are not liable to condemnation or to the costs and expenses referred to in Article 41. The same rule applies if the master, after becoming aware of the outbreak of hostilities, or of the declaration of contraband, has had no opportunity of discharging the contraband.

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<sup>1</sup> This is an addition made by the Order in Council.

**CONTRABAND OF WAR—continued**

A vessel is deemed to be aware of the existence of a state of war, or of a declaration of contraband, if she left a neutral port subsequently to the notification to the Power to which such port belongs of the outbreak of hostilities or of the declaration of contraband respectively, provided that such notification was made in sufficient time. A vessel is also deemed to be aware of the existence of a state of war if she left an enemy port after the outbreak of hostilities.

ART. 44.—A vessel which has been stopped on the ground that she is carrying contraband, and which is not liable to condemnation on account of the proportion of contraband on board,<sup>1</sup> may, when the circumstances permit, be allowed to continue her voyage if the master is willing to hand over the contraband to the belligerent warship.

The delivery of the contraband must be entered by the captor on the logbook of the vessel stopped, and the master must give the captor duly certified copies of all relevant papers.

The captor is at liberty to destroy the contraband that has been handed over to him under these conditions.

*A neutral vessel which succeeded in carrying contraband to the enemy with false papers may be detained for having carried such contraband if she is encountered before she has completed her return voyage.*<sup>2</sup>

The above articles only concern the carriage of contraband by neutrals. Such carriage is, *a fortiori*, prohibited as regards British vessels, which are not only liable to capture and trial before the Prize Courts, but entail penalties for illicit trading with the enemy.<sup>3</sup>

**CONTRACTS WITH ENEMY SUBJECTS.**—The effect of war on private contracts with enemy subjects differs according to the different cases. Thus a contract entered into during the war is a trading with the enemy (*q.v.*), and being pro-

<sup>1</sup> See Art. 40, *supra*.

<sup>2</sup> This is an addition made by the Order in Council.

<sup>3</sup> See Proclamation on the subject, p. 217. See also **TRADING WITH THE ENEMY; CONVERSION OF MERCHANT SHIPS INTO VESSELS OF WAR; MERCHANT VESSELS AS CRUIZERS; ARMED MERCHANT VESSELS;** Hague Convention, 1907, No. VII., p. 165.



**CONTRACTS WITH ENEMY SUBJECTS**—*continued*

hibited, is null and void, unless entered into under licence. Nor can an enemy subject during war appear as a party in a law-suit in a British Court.<sup>1</sup> The operation of agreements entered into before the war is only suspended during its continuance. This does not apply to an insurance agreement under which an enemy subject is insured against capture by a British ship.

There are a number of useful short treatises on this subject which those who have difficulty in ascertaining the rights and liabilities involved can consult for more ample details and authorities—viz.: N. Bentwich, "Private Property in War," London, 1907; C. Phillipson, "Effect of War on Contract," London, 1909; A. Latifi, "Effect of War on Property," London, 1909; E. J. Schuster, "Effect of War on Commercial Transactions," London, 1914; Arthur Page, "War and Alien Enemies," London, 1914.

Art. 23 (*h*) of The Hague Regulations forbids belligerents to declare extinguished, suspended, or unenforceable claims and actions of enemy subjects. See a careful and judicious examination of the meaning of this clause in Higgins, "Hague Peace Conferences," p. 263 *et seq.* Cambridge, 1909. See also Oppenheim, "International Law," 2nd ed., vol. ii., p. 133 *et seq.* London, 1912.

See **TRADING WITH THE ENEMY**.

**CONVOY.**—When neutral merchant ships are accompanied or conveyed by a warship of their nationality, they are regarded by most European and American States as exempt from belligerent visit and search (*q.v.*), provided the commander of the warship certifies that there is no contraband among their cargo.

Thus, under the Japanese Regulations governing captures at sea of 1904, "a neutral vessel under convoy of a war vessel of her country shall not be visited nor searched

<sup>1</sup> See, however, **PRIZE COURTS** (Initial Procedure), p. 106.

**CONVOY**—*continued*

if the commanding officer of the convoying war vessel presents a declaration signed by himself stating that there is on board the vessel no person, documents, or goods that are contraband of war, and that all the ship's papers are perfect, and stating also the last port which the vessel left and her destination. In case of grave suspicion, however, this rule does not apply " (Art. 33).<sup>1</sup>

Similarly in the Italian Prize Regulations of 1911,<sup>2</sup> "ships escorted by a neutral war vessel are exempt from visit; naval commanders will limit themselves in such cases to demanding, when they think fit, from the commander of the convoying ship a written declaration regarding the nature and cargo of the convoys.

"If there is reason to believe that the confidence of the commander of the convoying vessel has been abused, these suspicions shall be communicated to him in order that he may proceed alone to make the necessary verifications, issuing a written report on the subject " (Art. 12).

Although British practice has differed from the above in repudiating any exemption from visit and search when England is a belligerent, the Naval Prize Act of 1864, nevertheless, recognizes the institution, and provides that if the master or other person having the command of any British ship, under the convoy of any British ships of war, "wilfully disobeys any lawful signal, instruction, or command of the commander of the convoy, or without leave deserts the convoy, he is liable to be proceeded against in the High Court of Admiralty, and upon conviction to be fined, in the discretion of the Court, any sum not exceeding £500, and to suffer imprisonment for such time, not exceeding one year, as the Court may adjudge."

The British Government also agreed to the following provisions in the Declaration of London:

"Neutral vessels under national convoy are exempt from search. The commander of a convoy gives, in

<sup>1</sup> Takahashi, "International Law applied to the Russo-Japanese War," London, 1908.

<sup>2</sup> See Barclay, "Turco-Italian War and its Problems," p. 125. London, 1912.

**CONVOY**—*continued*

writing, at the request of the commander of a belligerent warship, all information as to the character of the vessels and their cargoes, which could be obtained by search" (Art. 61).

"If the commander of the belligerent warship has reason to suspect that the confidence of the commander of the convoy has been abused, he communicates his suspicions to him. In such a case it is for the commander of the convoy alone to investigate the matter. He must record the result of such investigation in a report, of which a copy is handed to the officer of the warship. If, in the opinion of the commander of the convoy, the facts shown in the report justify the capture of one or more vessels, the protection of the convoy must be withdrawn from such vessels (Art. 62).

These provisions having been made operative by Order in Council<sup>1</sup> for the duration of the war of 1914, the older English practice for the present is in abeyance.

**COURT-MARTIAL.**—A court constituted exclusively of military officials and having, in time of peace, jurisdiction in respect of such offences against military and civil law as are defined in the Army Act of 1881.

In time of war, or if a state of siege is declared, the powers of Courts-martial may be extended. See **MARTIAL LAW**; also "Manual of Military Law" (1914), Chapters ii. and iii.

**CREWS OF CAPTURED MERCHANT SHIPS.** — See **PRISONERS OF WAR.**

<sup>1</sup> See **DECLARATION OF LONDON.**

**CRIMES OF WAR.**—The term "war crime" is the technical expression for such an act of enemy soldiers and enemy civilians as may be visited by punishment on capture of the offenders. It is usual, says the "Manual of Land Warfare," to employ this term, but it must be emphasized that it is used in the technical military and legal sense only, and not in the moral sense. For although some of these acts, such as abuse of the privileges of the Red Cross badge, or the murder of prisoners, may be disgraceful, yet others, such as conveying information about the enemy, may be highly patriotic and praiseworthy. The enemy, however, is in any case entitled to punish these acts as war crimes. War crimes may be divided into four different classes:

1. Violations of the recognized rules of warfare by members of the armed forces.
2. Illegitimate hostilities in arms committed by individuals who are not members of the armed forces.
3. Espionage and war treason.
4. Marauding.<sup>1</sup>

**DARDANELLES.**—Under a Convention annexed to the Treaty of Paris between Great Britain, Austria, France, Prussia, Russia, and Sardinia, and signed at Paris on the same date as the Treaty, April 27, 1856, the Sultan declared that he was firmly resolved to maintain the principle "established as the ancient rule of his Empire," in virtue of which it has "at all times been prohibited for the ships of war of foreign Powers to enter the Straits of the Dardanelles and of the Bosphorus; and that, so long as the Porte was at peace, no foreign ship of war would be admitted into the said Straits."

The above Powers, on the other part, engaged to respect this determination of the Sultan, and to conform themselves to the principle therein declared.

<sup>1</sup> See "Manual of Land Warfare."

**DARDANELLES**—*continued*

The Sultan, however, reserved power, as in past times, to deliver firmans of passage for light vessels under flag of war, employed merely in the service of the Missions of foreign Powers, the same exception to apply to the light vessels under flag of war which each of the Contracting Powers is authorized to station at the mouths of the Danube in order to secure the execution of the regulations relative to that river, the number of them not to exceed two for each Power.

As regards the position of the Black Sea, which forms part of the agreements concerning the Dardanelles, under the Treaty it was neutralized (Art. 11), and "formally and in perpetuity interdicted to the flag of war, either to that of the Powers possessing its coasts, or to that of any other Power, with some slight exceptions."

Under another article both Russia and Turkey undertook to establish no naval arsenals on its coasts.

By a new Treaty, signed at London, March 13, 1871, these provisions were abrogated, although the principle of the closing of the Straits of the Dardanelles and the Bosphorus, as established by the Convention of March 30, 1856, was maintained, with power to the Sultan to open the Straits in time of peace to the vessels of war of friendly and allied Powers, "in case the Sublime Porte should judge it necessary in order to secure the execution of the stipulations of the Treaty of Paris of March 30, 1856," the Black Sea to remain open, as theretofore, to the mercantile marine of all nations.

This is still the situation of the question of the Dardanelles and the Black Sea.<sup>1</sup>

**DAYS OF GRACE.**—See **HAGUE CONVENTION**, No. VI., Art. 1, p. 164.

<sup>1</sup> See, for full text of the different treaties and convention on the question, Barclay, "The Turco-Italian War and its Problems." London, 1912.

**DEAD IN WAR.**—The military identification marks or tokens found on the dead must be sent to the authorities of the army or country to which they belong as early as possible.<sup>1</sup>

Before the dead are buried or cremated they must be carefully examined to see that life is extinct.<sup>2</sup>

The articles of personal use, valuables, letters, etc., found on a field of battle or left by wounded or sick who die in medical establishments or units must be collected and transmitted to the persons interested, through the authorities of their own country.<sup>3</sup>

**DECLARATION OF LONDON.**—The Conference of London arose out of a scheme for the establishment of an International Prize Court, drawn up at The Hague Conference of 1907.

Two projects were simultaneously presented on behalf of Great Britain and Germany<sup>4</sup> on June 25.

The original English idea was "to secure the adaptation" of the machinery of the existing Hague Court to the purposes of an "International Tribunal of Appeal" from decisions of belligerent Prize Courts. The official instructions, published in the correspondence respecting the Second Conference, observed in reference to the proposal that the "judgments of the Tribunal in such cases would probably prove the most rapid and efficient means which can, under existing conditions, be devised for giving form and authority to the *canons of International Law* in matters of prize."

An elaborate scheme in fifty-two Articles was ultimately presented in the names of Great Britain, Germany, France, and the United States, as the result of the deliberations

<sup>1</sup> Gen. Conv., Art. 4.

<sup>2</sup> *Ibid.*, Art. 3.

<sup>3</sup> *Ibid.*, Art. 4.

<sup>4</sup> Prince von Bülow had been credited with suggesting in his correspondence on the question of the *Bundesrath* that a tribunal of arbitration should be instituted to deal with all questions of capture. At any rate, on January 19, 1900, he wrote that the German Government had proposed that all the points then in dispute should be submitted to arbitration. The British Government declared their concurrence in the institution of a tribunal to arbitrate upon the claims for compensation.

**DECLARATION OF LONDON**—*continued*

of the Conference. Of it the British delegates, in their report on the work of the Conference, wrote that it was to them a subject of satisfaction that they had been able to accomplish the task thus laid upon them, "not, indeed, in the form of an adaptation of the machinery of the existing Court, but in the form of a new institution"; and that the Convention drawn up appeared to them to be "a very noteworthy step in the history of law as the first attempt to constitute a really International Court, and as the first device to produce uniformity in any branch of International Law."

The difficulty as to the law to be applied was met in the scheme adopted by giving the Court jurisdiction over actions "founded on the allegation that the capture had been effected either in violation of a conventional provision in force between the belligerent Powers, or of a legal provision imposed by the capturing belligerent" (Art. 3, 1<sup>o</sup> c); furthermore, that if a legal point was involved, it should be settled in accordance with the provisions of any "existing Convention between the capturing belligerent and the Power which is itself a party to the action, or whose *ressortissant* (subject) is a party thereto"; in default of any such Convention "the Court shall apply the rules of International Law," and if "there are no generally recognized rules, the Court's decision shall be in accordance with the general principles of justice and equity"; and if "the recourse is founded upon the violation of a legal provision imposed by the capturing belligerent," the Court should apply it (Art. 7).

The margin of uncertainty involved in the alternative of "principles of justice and equity" was reduced to some extent by the work of the Conference in connection with maritime law.

A further Conference was necessary to supply a uniform code of Prize Law binding on the Judges of the International Court, and a new Conference was called at the instance of the British Government for this purpose. It sat in London from December 4, 1908, to February 26,

**DECLARATION OF LONDON—continued**

1909. The States represented at it were confined to Great Britain, France, Germany, Italy, Austria-Hungary, Russia, Spain, Holland, the United States, and Japan. The Rules on Naval Warfare which were adopted covered the following matters: Blockade (*q.v.*), Contraband of War (*q.v.*), Unneutral Service (*q.v.*), Destruction of Neutral Prizes (*q.v.*), Transfer to Neutral Flag (*q.v.*), Enemy Character (*q.v.*), Convoy (*q.v.*), Resistance (see **VISIT AND SEARCH**) and Compensation (see **PRIZE**).<sup>1</sup>

The Declaration has not been ratified by Great Britain, nor consequently by any other of the signatory Parties. Nevertheless, the Italian Prize Decree in connection with the Turco-Italian War stated that instructions were issued to Italian naval commanders to regulate their conduct according to the Declaration of London in operations relating to capture and prize.<sup>2</sup>

In the course of the same war, when some alarm was caused by a rumour that the Ottoman Government had declared grain contraband of war irrespective of destination, and this would have affected all the shipments from the Black Sea, numbering, it was estimated, some 200 to 300 vessels, the Russian Government issued the following note:

"The Imperial Government, basing itself on the Declaration of Paris of 1856 and on Articles 24 and 33 of the Declaration of London, considers that cargoes of corn are subject neither to arrest nor to confiscation when addressed from Russian ports on the Black Sea to Italian or other ports so long as such cargoes are not destined for Italian field forces or for Italian official consignees. Any attempt to arrest or confiscate the above-mentioned cargoes the Russian Government will regard as a violation of the rights of Russia, and the Government gives warning of the heavy responsibility which the Turkish Government would incur in such circumstances."

The Ottoman Government, in turn, declared its intention of acting likewise, with the result that the grain-ships passed through the Dardanelles unmolested.<sup>3</sup>

<sup>1</sup> See the full text of the **DECLARATION**, p. 196. See also the Order in Council making it, with alterations and additions, operative during the war of 1914.

<sup>2</sup> See Barclay, "Turco-Italian War and its Problems." London, 1912, p. 123.

<sup>3</sup> See *op. cit.*, p. 99 *et seq.*



**DECLARATION OF LONDON—continued**

In connection with the war of 1914 the British Government issued on August 20 an Order in Council, stating that—

“Whereas during the present hostilities the naval forces of His Majesty will co-operate with the French and Russian naval forces, and

“Whereas it is desirable that the naval operations of the allied forces so far as they affect neutral ships and commerce should be conducted on similar principles, and

“Whereas the Governments of France and Russia have informed His Majesty's Government that during the present hostilities it is their intention to act in accordance with the provisions of the Convention known as the Declaration of London, signed on February 26, 1909, so far as may be practicable,”

it was ordered that during the pending hostilities the Declaration of London would be adopted and put in force, “as if the same had been ratified by His Majesty,” subject to certain additions and modifications in the law of blockade (*q.v.*) and contraband (*q.v.*).<sup>1</sup>

The Order furthermore stated that the—

“general report of the Drafting Committee on the said Declaration presented to the Naval Conference, and adopted by the Conference at the eleventh plenary meeting on February 25, 1909, shall be considered by all Prize Courts as an authoritative statement of the meaning and intention of the said Declaration, and such Courts shall construe and interpret the provisions of the said Declaration by the light of the commentary given therein.”

In all matters which may arise and which are not dealt with in the Declaration of London, the law and practice applicable are, of course, those which are the recognized law and practice of English Prize Courts.

A French Decree of August 25, 1914, gives effect to the provisions of the Declaration of London, with substantially the same modifications as those adopted by the British Government (*supra*).<sup>2</sup>

<sup>1</sup> See full text of the Order in question, p. 213.

<sup>2</sup> See *London Gazette*, September 4, 1914.

**DECLARATION OF PARIS.**—This Declaration was drawn up at the close of the negotiations for the Treaty of Paris of 1856, with a view to averting disputes which might arise out of the difference of opinions prevailing among European States on several matters of International Law.

The four rules thus adopted were the abolition of privateering, which had already been renounced by Great Britain and France in the preceding war, and the three following principles: (a) That the neutral flag covers enemy's goods except contraband of war; (b) that neutral goods, with the exception of contraband of war, are not liable to capture under the enemy's flag; (c) that blockades to be binding must be effective—in other words, *paper blockades* were no longer to be binding.<sup>1</sup>

Non-signatories afterwards acceded to it, except Spain, Mexico, Venezuela, and the United States. At The Hague Conference (September 27, 1907) the Spanish and Mexican Delegates announced the accession at length of their respective countries.

As regards the United States Government, while recognizing the last three principles, it was unable to agree to the first—*i.e.*, the abolition of privateering—on the ground that, maintaining only a small navy, it would be obliged in time of war to rely largely upon merchant-ships commissioned by the Government as war vessels, and that therefore the discontinuance of privateering would be entirely in favour of European Powers, whose large navies rendered them practically independent of such aid, unless immunity of private property from capture in maritime warfare were proclaimed along with the abolition of privateering.

Nevertheless during the Hispano-American War, the United States Government disclaimed any intention of reviving the now practically extinct institution.<sup>2</sup>

See **MERCHANT SHIPS AS CRUISERS.**

<sup>1</sup> See **BLOCKADE.**

<sup>2</sup> See text of **DECLARATION** in full, p. 145.

**DECLARATION OF WAR.**—A special Hague Convention (No. 3 of 1907) deals with this subject. "*Il importe*," says the preamble, that "hostilities should not be commenced without previous notice," and that "a state of war should be notified to neutral Powers without delay."

Some years ago, in connection with the project of constructing a tunnel under the British Channel, the late Major-General Sir J. F. Maurice was instructed by the Adjutant-General to draw up a paper on "cases in which hostilities had occurred between civilized Powers prior to declaration or warning of war." The results of the inquiry which were published in 1883 as an official book, entitled "Hostilities without Declaration of War," showed that there was no established usage on the subject, and that during 171 years (from 1700 to 1870 inclusive) less than ten cases had occurred in which an actual declaration of war, prior to hostilities, had been given.

All the more important recent wars, except the Russo-Japanese War, however, even prior to the Convention of 1907, have been preceded by deliberate notice—namely, the Franco-German, in which the French Government handed through its *Chargé d’Affaires* a formal declaration to the Prussian Foreign Minister; that of 1877, when the Russian Government handed a similar declaration to the Turkish *Chargé d’Affaires* at St. Petersburg; and the Hispano-American and Anglo-Boer Wars, which were preceded by ultimatums.<sup>1</sup>

As regards the mode in which, in February, 1904, Japan began the war against Russia, though there was no express prior declaration of war, there were all the symptoms of approaching war. As early as December, 1903, public opinion was prepared for its outbreak. Throughout January Japan manifested her impatience in unmistakable terms. On February 5 Baron Komura, the Japanese Minister of Foreign Affairs, instructed the Japanese Minister at St. Petersburg to give formal notice of the rupture of the pending negotiations, and intimated that the Japanese Government would "take such independent action as it

<sup>1</sup> See **ULTIMATUM.**

**DECLARATION OF WAR—continued**

might consider best to consolidate and defend its threatened position, as well as protect Japan's vested rights and legitimate interests."<sup>1</sup> This intimation was accompanied by a signed note<sup>2</sup> announcing that the whole Japanese Legation would leave St. Petersburg on February 10. It was only on February 10, however, two days after the Japanese had begun hostilities, that they issued their declaration of war.

In the Turco-Italian War the Italian Government telegraphed its ultimatum to Constantinople on September 26, and gave the Turkish Government twenty-four hours' grace to reply, running from the hour of its presentation. It was presented on the morning of the 28th, and followed by a declaration of war dating from the 29th at 2.30 p.m.<sup>3</sup>

The Turco-Balkan War was preceded by ultimatums and declarations of war, but that against Bulgaria seems to have arisen out of hostilities between the occupying forces of Greece and Bulgaria, and not to have been preceded by any formal notice.

In the European War of 1914, in all cases proper and adequate notice was given by formal declaration, but on all sides also the Powers seem to have taken the precaution of beginning their preparation for war even before actual mobilization.

The course followed seems to have been—

1. The moving, as much as possible, of the active forces to the frontier.

2. Mobilization.

3. Declaration of war, the diplomatic request for passports being simultaneous with the declaration, and not prior to it.

In this way there was no loss of time in preparing for war, while diplomacy was endeavouring to effect a pacific settlement.

<sup>1</sup> Documents diplomatiques, Correspondance concernant les Négociations entre le Japon et la Russie, 1903-1904.

<sup>2</sup> See text of note, Barclay, "Problems of International Practice and Diplomacy," p. 55.

<sup>3</sup> See Barclay, "Turco-Italian War and its Problems," p. 109 *et seq.*

**DECLARATION OF WAR—continued**

The series of ultimatums and declarations was as follows:

*July 23.*—Austro-Hungarian ultimatum to Serbia, with forty-eight hours for reply.

*July 28.*—War against Serbia declared.

*August 1.*—Ultimatum of Germany to Russia, with twelve hours for reply. Declaration of war the same day.

*August 2.*—German ultimatum to Belgium, with twelve hours for reply.

*August 3.*—German Ambassador applies for his passports, simultaneously delivers declaration of war on France, and leaves Paris.

*August 4.*—British ultimatum to Germany. Germany declares war on Belgium, Great Britain on Germany.

*August 16.*—Austrian declaration of war against Russia, Servian against Germany, Montenegrin against Austria.

*August 11.*—Montenegrin declaration of war against Germany.

*August 12.*—British and French declaration of war against Austria.

*August 23.*—Japanese declaration of war against Germany.

The articles of Convention, No. III., on the subject provide that "the contracting Powers agree that hostilities shall not commence between them without previous and unequivocal notice, which shall be in the form either of a declaration of war stating its grounds, or of an ultimatum with a conditional declaration of war"; and that "the state of war shall be notified without delay to the neutral Powers, and shall only take effect with respect to them after receipt of notice, which may even be sent by telegraph. Neutral Powers, however, cannot set up the absence of notification if it be shown that they unquestionably were cognizant of the state of war."<sup>1</sup>

<sup>1</sup> The full text of the Convention will be found at p. 146.

**DESERTERS.**—Deserters from the enemy should be treated as prisoners of war, unless special circumstances render it desirable to liberate them.<sup>1</sup>

Deserters and subjects of a belligerent State fighting in the enemy's ranks are traitors to their country, and, when captured, are liable to the penalty for treason. They cannot be regarded as enemies in the military sense of the term, and cannot claim the privileges of the members of the armed force of the enemy, but terms may be specially made for them.<sup>2</sup>

**DESTRUCTION OF ENEMY PROPERTY.**—It is expressly forbidden by Art. 23 (7) of the "Regulations for War on Land" to destroy or seize enemy property unless such destruction or seizure be "imperatively required by the necessities of war."

**DESTRUCTION OF NEUTRAL PRIZES.**—The destruction by the Russian Fleet during the Russo-Japanese War of a number of captured neutral vessels without trial by a Prize Court gave rise to a serious controversy between the British and Russian Governments. The Russian contention was that "the captor of a neutral ship is within his rights if he sinks it, for the reason that it is difficult, or impossible, for him to convey it to a national port for adjudication by a Prize Court," or even inconvenient to do so, "because of the distance of the port to which the vessel should be brought," or because "her conveyance to such a port would take too much time or entail too great a consumption of coal," or because the "captor has not at his disposal a sufficient number of men from whom to provide

<sup>1</sup> "Manual of Land Warfare," Sect. 64.

<sup>2</sup> *Op. cit.*, Sect. 36.

**DESTRUCTION OF NEUTRAL PRIZES—continued**

a crew for the captured vessel." "The effects of a consistent application of these principles," Lord Lansdowne pointed out, "would justify the wholesale destruction of neutral ships taken by a vessel of war at a distance from her own base, upon the ground that such prizes had not on board a sufficient amount of coal to carry them to a remote foreign port—an amount of coal with which such ships would probably in no circumstances have been supplied. They would similarly justify the destruction of every neutral ship taken by a belligerent vessel which started on her voyage with a crew sufficient for her own requirements only, and was therefore unable to furnish prize crews for her captures." "The adoption of such measures by the Russian Government could not fail to occasion a complete paralysis of all neutral commerce" (Foreign Office, August 10, 1904).<sup>1</sup>

The subject was among those included in the programme of the London Conference of 1908-09, at which rules were adopted, which are now operative for the duration of the war of 1914 (see **DECLARATION OF LONDON**). Under them a "neutral vessel which has been captured may not be destroyed by the captor; she must be taken into such port as is proper for the determination there of all questions concerning the validity of the capture" (Art. 48).

Nevertheless, a neutral vessel which has been captured by a belligerent warship, and which would be liable to condemnation, may be destroyed if observance of the foregoing provision would involve danger to the safety of the warship or to the success of the operations in which she is engaged at the time (Art. 49).

Before the vessel is destroyed all persons on board, however, must be placed in safety, and all the ship's papers and other documents which the parties interested consider relevant for the purpose of deciding on the validity of the capture taken on board the warship (Art. 50).

If a captor who has destroyed a neutral vessel, prior to any decision respecting the validity of the prize, is unable

<sup>1</sup> See, as regards the *Kow-Shing* case, Barclay, "Problems," etc., p. 100

**DESTRUCTION OF NEUTRAL PRIZES**—*continued*

to show that he only acted in the face of exceptional necessity, he must compensate the parties interested, and no examination is made of the question whether the capture was valid or not (Art. 51).

Also, if the capture of a neutral vessel is subsequently held to be invalid, though the act of destruction has been held to have been justifiable, the captor must pay compensation to the parties interested, in place of the restitution to which they would have been entitled (Art. 52).

Again, if neutral goods not liable to condemnation have been destroyed with the vessel, the owner of such goods is entitled to compensation (Art. 53).

The captor has the right to demand delivery of, or proceed himself to the destruction of, any goods liable to condemnation found on board a vessel not herself liable to condemnation, provided the circumstances are such as would justify the destruction of a vessel herself liable to condemnation. The captor must in either case enter the goods in the logbook of the vessel stopped, and obtain duly certified copies of all relevant papers. When the goods have been handed over or destroyed, and the formalities duly carried out, the master must be allowed to continue his voyage. In either case also the provisions above respecting the liability of a captor who has destroyed a neutral vessel are applicable (Art. 54).

Baty, "Britain and Sea Law," 1911, on this subject may be referred to with profit.

**DETENTION OF ENEMY SUBJECTS.**—It is no longer considered admissible to detain as prisoners subjects of one of the hostile parties travelling or resident in the country of the other at the time of the outbreak of war, subject to the reservation of the right which every State undoubtedly possesses of taking such steps as it may seem necessary for the control of all persons whose presence or conduct



**DETENTION OF ENEMY SUBJECTS**—*continued*

appear dangerous to its safety.<sup>1</sup> In the case of the war of 1914, the British Government has made ample use of another reservation—viz., that enemy aliens on British territory qualified for military service are *ipso facto* belligerent in a country of universal conscription, and may therefore be arrested and assimilated to prisoners of war.

**DUM-DUM BULLETS.**—The employment of dum-dum bullets is forbidden by a special Declaration of The Hague Conference of 1899 (see p. 195).

**ENEMY CHARACTER.**—Subject to the provisions respecting *transfer to another flag (q.v.)*, says the Declaration of London, the neutral or enemy character of a vessel is determined by the flag which she is entitled to fly (Art. 57).

The case of a neutral vessel engaged in a trade closed in time of peace,<sup>2</sup> remains outside the scope of, and is in no wise affected by, this rule.

The neutral or enemy character of goods found on board an enemy vessel is determined by the neutral or enemy character of the owner (Art. 58).

In the absence of proof of the neutral character of goods found on board an enemy vessel, they are presumed to be enemy goods (Art. 59).

Enemy goods on board an enemy vessel retain their enemy character until they reach their destination, notwithstanding any transfer effected after the outbreak of hostilities while the goods are being forwarded.

If, however, prior to the capture, a former neutral owner exercises, on the bankruptcy of an existing enemy owner, a recognized legal right to recover the goods, they regain their neutral character (Art. 60).

<sup>1</sup> "Manual of Land Warfare," Sect. 12.

<sup>2</sup> See **RULE OF THE WAR OF 1756**.

**ENEMY SUBJECTS IN BELLIGERENT COUNTRY.**—See  
**DETENTION OF ENEMY SUBJECTS.**

**ENEMY** (*i.e.*, **BELLIGERENT**) **SUBJECTS ON NEUTRAL SOIL** are subject to such regulations as the neutral State may impose for the maintenance of its neutrality. See **NEUTRALITY.**

**ENEMY SUBJECTS, PROPERTY OF.**—See **CONTRACTS WITH ENEMY SUBJECTS; TRADING WITH THE ENEMY; OCCUPATION, MILITARY.**

**ESCAPE OF PRISONERS OF WAR.**—Prisoners of war attempting to escape may be fired upon.

Escaped prisoners who are retaken before being able to rejoin their own army, or before leaving the territory occupied by the army which captured them, are liable to disciplinary punishment.<sup>1</sup>

**ESPIONAGE AND WAR TREASON.**—The employment of measures necessary for obtaining intelligence with regard

<sup>1</sup> "Manual of Land Warfare," Sects. 74, 75.

**ESPIONAGE AND WAR TREASON**—*continued*

to the enemy and the theatre of war is formally sanctioned by The Hague War Regulations.<sup>1</sup>

The ordinary means of obtaining information are reconnaissances by individuals or bodies of troops, questioning inhabitants and prisoners, examination of captured documents and papers.

The collection of information openly by combatants clad in a distinguishable uniform is a recognized branch of the art of war, and it can be provided against by firing on the persons engaged in it or taking them prisoners.

It is lawful to employ spies and secret agents, and even to gain over by bribery or other means enemy soldiers or private enemy subjects.<sup>2</sup>

“The obtaining, supplying, and carrying of information to the enemy is not espionage, unless the individual concerned is acting clandestinely and under false pretences; but it may be war treason. Thus, for instance, inhabitants of enemy territory occupied by a belligerent who give information to the enemy may be punished for war treason. Many other acts, however, which may be attempted or accomplished in occupied territory, or within the enemy's lines, by private individuals or by soldiers in disguise, are also classed as war treason, although perfectly legitimate if done by members of the armed forces. For instance, damage to railways, war material, telegraphs, or other means of communication, in the interest of the enemy; aid to enemy prisoners of war to escape; conspiracy against the armed forces or against members of them; intentionally misleading troops in the interest of the enemy, when acting as guide; voluntary assistance to the enemy to facilitate his operations (for instance, by giving supplies and money, and acting as guides); inducing soldiers to serve as spies, to desert, or to surrender; bribing soldiers in the interests of the enemy; damage or alteration to military notices and signposts in the interests of the enemy; fouling water-supply and concealing animals, vehicles, supplies, and fuel in the interests of the enemy; knowingly aiding the advance or retirement of the enemy; circulating proclamations in the interests of the enemy.”<sup>3</sup>

See **SPIES**.

<sup>1</sup> Art. 24.

<sup>2</sup> “Manual of Land Warfare,” Sect. 158.

<sup>3</sup> *Op. cit.*, Sect. 445.

**EXPORTATIONS.** See **WARLIKE STORES, EXPORTATION OF ; TRADING WITH THE ENEMY.**

**EXPULSION OF ENEMY SUBJECTS.**—The expulsion of subjects of the enemy from the territory of the opposing State is in strict law admissible, but is usually not resorted to unless grave reasons make it advisable.

Belligerents have in recent years always acted in obedience to this principle. Thus expulsion has been decreed from seaports, fortresses, and defended areas, where special precautions were necessary, and from the actual or expected theatres of hostilities.

Should the expulsion of any person be ordered, he should be given such reasonable notice as may be consistent with public safety, in order to make arrangements for the custody of his property and preparations for his departure.<sup>1</sup>

**FISHING BOATS AND VESSELS.**—Boats solely intended for coast fishing or for petty local navigation are specifically exempted from capture as between belligerents in time of war. See Hague Convention, No. XI., p. 172.

**FLAG OF TRUCE.**—To make improper use of a flag of truce is forbidden by The Hague Regulations for the conduct of war (Art. 23).

Any person authorized by one of the belligerents to enter into communication with the other, who carries a white flag, has a right to inviolability, as well as the trum-

<sup>1</sup> "Manual of Land Warfare," Sects. 14-16.

**FLAG OF TRUCE**—*continued*

peter, bugler, or drummer, the flag-bearer, and the interpreter who accompany him (Regs., Art. 32).

The commander to whom he is sent is not obliged to receive him, and he can take all steps necessary to prevent the envoy taking advantage of his mission to obtain information, and in case of abuse has the right temporarily to detain him (Art. 33).

If it is proved beyond doubt that he has taken advantage of his privileged position to provoke or commit an act of treachery, he loses his right to inviolability (Art. 34).

**FLOATING MINES.**—The preamble to Convention No. VIII. states that it is inspired by the "principle of the freedom of the maritime highways open to all nations."

"Considering that, if in the present state of things the use of submarine mines with automatic contact cannot be forbidden, it is important to limit and regulate their use, in order to restrict the rigours of war, and to give, as far as possible, to peaceful navigation the security it has the right to claim, in spite of the existence of a war."

With a view to doing so, the Convention forbids the placing of (1) automatic mines of contact, not moored, unless they are so constructed as to become harmless one hour at most after those who have placed them have lost control over them; and (2) of automatic mines of contact which are moored, if they do not become harmless when they have broken from their moorings; (3) the employment of torpedoes which do not become harmless when they have missed their object.

It also forbids the placing of automatic contact mines along the enemy coast or ports, with the sole object of intercepting commercial navigation.<sup>1</sup>

<sup>1</sup> See reservations in reference to this provision, **HAGUE CONVENTIONS**, p. 61.

**FLOATING MINES**—*continued*

When moored automatic contact mines are used, all possible precautions are to be taken for the security of peaceful navigation.

Belligerents are also bound to arrange, as far as possible, that these mines shall become harmless after a limited lapse of time, and, when they cease to be guarded, to notify the dangerous regions as soon as military exigencies permit.

As regards neutral Powers, every such Power placing automatic contact mines along its coasts must observe the same rules and take the same precautions as those imposed on belligerents, and must notify navigation of the places where automatic contact mines are moored.

At the termination of the war, all the Powers concerned are bound to do everything in their power to remove the mines they have laid.

In spite of the allegation made in the above-quoted preamble as to the Conference inspiration, the provisions of the Convention, it is seen, do not specifically forbid the placing of mines on the high sea—that is to say, outside the limits of territorial waters. In fact, there is nothing apart from the construction which may be placed on the preamble forbidding belligerents from laying contact mines wherever it may suit them. On the other hand, there is nothing in it which authorizes any such abuse, and in all matters not dealt with in the Conventions the existing unwritten law continues to prevail.

Under the existing law there is no doubt as to the illegality of laying mines beyond the limits of territorial waters. In pretty general (but not universal) practice a zone of three miles along the coast-line is recognized as being under the sovereignty of the adjacent State. Bays not exceeding ten miles from headland to headland are assimilated to estuaries of the same width, the coast-line from which the zone is calculated passing from such headland to headland. Beyond this zone is the high sea, which is the common property of mankind, and belligerents have no right to interfere with its safety beyond exercising the rights of

**FLOATING MINES**—*continued*

visit and search and effective blockade, which are specific and well-ascertained rights, not capable of extension to cover the laying of mines.<sup>1</sup>

German writers, for the purpose of legalizing an encroachment on this freedom of the sea, have denied the existence of any rule of International Law limiting the margin of territorial waters to three miles. Thus the distinguished Berlin Professor of International Law, Professor von Martitz, in a paper on "Mines in Naval War," read at the Berlin meeting of the International Law Association (October, 1906), claimed for belligerents the right to lay mines as far seawards as ten nautical miles (cannon-range) from the coast—cannon-range, in his opinion, still determining the width of the territorial waters' zone, subject to any contractual arrangement fixing it otherwise.

As regards the question of humanity, one of the objects of The Hague Conferences was the attenuation of the horrors of war. No horror yet devised seems, however, quite equal to that of the destruction of a ship by a floating mine, especially at a distance from the seat of hostilities, or when the mine has broken from its moorings and drifted to a situation where its existence is quite unsuspected. The same indignation which was shown for dum-dum bullets and shells giving out asphyxiating gases would also be justified even within the war area against floating mines. During the Russo-Japanese War they destroyed as many as nine vessels, including three battleships, with all the attendant horrors of being blown up without the slightest warning or other possible preparation, or means of life being saved by the enemy, who, under the existing laws of war, is bound to take all possible care to preserve the lives of those who have been disabled, without distinction between friends and foes.

During the blockade of Port Arthur the Russians laid mines in all parts of the sea adjacent to that port. The Japanese allege that from the beginning to the end of the

See Barclay, "Floating Mines Curse." *Nineteenth Century*, October, 1914.

**FLOATING MINES**—*continued*

siege they removed 395 Russian mines. The removal continued after the siege, so that the total number removed they estimate to have much exceeded this number. In an article in the *Times* of December 27, 1905, the Tokyo correspondent of that paper remarked that "this chapter of history would not have retained a prominent place in general recollection had it not been vividly illustrated from time to time by shocking disasters to merchant steamers, which, while navigating routes comparatively remote from the scene of the combat, struck errant mines and were sent to the bottom." The Russians were not alone the offenders. The Japanese made almost equally extensive use of such mines, as has been learnt from a document compiled at the Japanese Hydrographers' Office in answer to an application from the Russian headquarter staff for information as to the locality of any mines placed by the Japanese in the neighbourhood of Vladivostok. The Japanese Admiralty replied, said the same correspondent, by a detailed statement showing that two mine-laying operations had been carried out by the Japanese in Vladivostok waters—the one in April, 1904, to render impassable the entrance and exit through the straits which must be passed to reach the port; the other, about a year later, when the Baltic Fleet had arrived in Far Eastern Waters. In this case 715 mines were laid "right across Peter the Great Bay, from Askold Island to Korsakoff Island, a distance of forty miles." These figures show that there must have been a mine at about every 100 yards. "In spite of this great plexus of destructive engines, communications with Vladivostok continued undisturbed during the period of eight months from April 15, 1905, when the Askold-Korsakoff line was laid, to November 9 of the same year, when the Japanese Admiralty replied to the Russian inquiry."

Hague Convention No. VIII. has been ratified in its entirety by Austria-Hungary, Belgium, Denmark, the United States, and Japan, and not at all by Russia and Italy. France and Germany have ratified it under reserve



**FLOATING MINES**—*continued*

of Art. 2, forbidding belligerents to place automatic contact mines along the enemy coast or outside enemy ports with the sole object of intercepting commercial navigation. Great Britain has ratified, subject to the judicious reserve, that while signing the Convention she declared that the fact of the said Convention not forbidding certain acts would not be considered as depriving the British Government of the right to contest the legality thereof.

Art. 11 of the Convention provides that the H.C.P. shall have power to denounce it after expiry of seven years, dating from the sixtieth day after the first deposit of ratification. Such first deposit took place on November 27, 1909. Moreover, the denunciation only takes effect on expiry of six months after it reaches the Dutch Government, and is only operative in respect of the denouncing Power.

**FREIGHT LIST.** See **SHIP PAPERS.**

**FRIENDLY STATE.**—Any foreign State at peace with the Sovereign of the British Empire.

**GENEVA CROSS.** See **RED CROSS.**

**GUIDES.**—Art. 44 of The Hague Regulations forbids a belligerent compelling the inhabitants of territory occupied by it to give information about the army of the other belligerent. This *a fortiori* excludes the impressment of guides. Austria-Hungary, Germany, Japan, and Russia have not ratified this Article, and therefore no doubt claim to have the right of forcing inhabitants to act as guides.

**HAGUE CONVENTIONS.**—These are the agreements relating to Public International Law drawn up by the Conferences of 1899 and 1907. Those adopted in 1899 were as follows:

- I. A convention for the pacific settlement of international disputes.
- II. A convention relating to the laws and customs of war by land.
- III. A convention for the adaptation to maritime warfare of the principles of the Geneva Convention of August 22, 1864.

Three declarations on the following matters were also adopted:

- (1) Prohibition of the launching of projectiles and explosives from balloons or by other similar new methods.<sup>1</sup>
- (2) Prohibition of the use of projectiles, the only object of which is the diffusion of asphyxiating or deleterious gases.<sup>2</sup>
- (3) Prohibition of the use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope, of which the envelope does not entirely cover the core, or is pierced with incisions.<sup>3</sup>

The Conference of 1899 was attended by delegates from twenty-six different States. All the Conventions which they adopted were submitted for revision at that of 1907, which added a number of other Conventions, forming together quite a formidable code of International Law.

The complete list of the Conventions adopted, with their official numeration, is as follows:

- I. Convention for the peaceful settlement of international conflicts.
- II. Convention concerning the limitation of the use of arms for the recovery of contractual debts.
- III. Convention relating to the opening of hostilities.
- IV. Convention concerning the laws and customs of war on land.<sup>4</sup>
- V. Convention concerning the rights and duties of the Powers and of neutral persons in case of war on land.
- VI. Convention relating to the régime of commercial vessels at the opening of hostilities.

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<sup>1</sup> This was adopted for a period of five years, and was readopted at the Conference of 1907, but has not been ratified by any of the Great Powers, except Great Britain and the United States. See **AIRCRAFT, BALLOONS.**

<sup>2</sup> Ratified without duration by all the Powers engaged in the war of 1914.

<sup>3</sup> *Idem.*

<sup>4</sup> For excellent commentary on Arts of Regs., see Spaight, "War Rights on Land," London, 1911.

**HAGUE CONVENTIONS—continued**

- VII. Convention relating to the transformation of commercial vessels into men-of-war.
- VIII. Convention relating to the placing of automatic submarine mines of contact.
- IX. Convention concerning the bombardment by naval forces in time of war.
- X. Convention for the adaptation to maritime warfare of the principles of the Geneva Convention.
- XI. Convention relating to certain restrictions to the exercise of the right of capture in maritime warfare.
- XII. Convention relating to the establishment of an International Prize Court.
- XIII. Convention concerning the rights and duties of neutral Powers as regards maritime warfare.
- XIV. Declaration relating to the prohibition of throwing projectiles and explosives from balloons.

Down to date the ratifications of the chief Powers which have been handed at The Hague are as follows:

- I. France, Germany, Austria-Hungary, Russia, United States (r)<sup>1</sup>, Japan (r), Belgium, Holland, Norway, Portugal, Sweden, Denmark, Switzerland (r).
- II. Great Britain, France, Germany, Austria-Hungary, Russia, United States (r), Japan, Holland, Norway, Portugal, Denmark.
- III. Great Britain, France, Germany, Austria-Hungary, Russia, United States, Japan, Belgium, Holland, Norway, Portugal, Sweden, Denmark, Switzerland.
- IV. Great Britain, France, Germany (r)<sup>1</sup>, Austria-Hungary (r), Russia, United States, Japan (r), Belgium, Holland, Norway, Portugal, Sweden, Denmark, Switzerland.
- V. France, Germany, Austria-Hungary, Russia, United States, Japan, Belgium, Holland, Norway, Portugal, Sweden, Denmark, Switzerland.
- VI. Great Britain, France, Germany (r), Austria-Hungary, Russia (r), Japan, Belgium, Holland, Norway, Portugal, Sweden, Denmark, Switzerland.
- VII. Great Britain, France, Germany, Austria-Hungary, Russia, Japan, Belgium, Holland, Norway, Portugal, Sweden, Denmark, Switzerland.
- VIII. Great Britain (r), France (r), Germany (r), Austria-Hungary, United States, Japan, Belgium, Holland, Norway, Denmark, Switzerland.

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<sup>1</sup> (r) means subject to reservations; see below.

**HAGUE CONVENTIONS**—*continued*

- IX. Great Britain (r), France (r), Germany (r), Austria-Hungary, Russia, United States, Japan (r), Belgium, Holland, Norway, Portugal, Sweden, Denmark, Switzerland.
- X. France, Germany, Austria-Hungary, Russia, United States, Japan, Belgium, Holland, Norway, Portugal, Sweden, Denmark, Switzerland.
- XI. Great Britain, France, Germany, Austria-Hungary, United States, Japan, Belgium, Holland, Norway, Portugal, Sweden, Denmark, Switzerland.
- XIII. France, Germany (r), Austria-Hungary, Russia, United States (r), Japan (r), Belgium, Holland, Norway, Portugal, Sweden, Denmark, Switzerland.
- XIV. Great Britain, United States, Belgium, Holland, Norway, Portugal, Switzerland.

Thus it is seen that Great Britain has not ratified Nos. I., V., X., and XIII. This is owing to the fact that legislation is necessary before this formality can be completed. The necessary amendments in our municipal law are provided for by the Second Peace Conference (Conventions) Bill, which has not yet received Parliamentary sanction. As regards Conventions Nos. I. and X., Great Britain is at present bound by the older and similar Conventions signed at the Conference of 1899.

The reservations relating to the Conventions concerning war are as follows:

No. IV. Germany, Austria-Hungary, Russia, and Japan did not agree to Art. 44 of the Regulations for the conduct of war forbidding any compulsion of the population of occupied territory to give information respecting the army of the other belligerent or its means of defence, considering that they had gone all the length they could in accepting the more general provision of Art. 23 (*in fine*) of the Regulations, which declares it forbidden to compel the nationals of the adversary to take part in hostile operations against their country.

No. VI. Germany and Russia did not agree to Art. 3 and Sect. 2 of Art. 4. The effect of this reservation is that neither is bound by the prohibition to confiscate enemy merchant ships which had left their last port of call before the beginning of hostilities, and which, when

**HAGUE CONVENTIONS**—*continued*

met on the high seas, are ignorant of the existence of hostilities. In other words, both Germany and Russia claim to be entitled to confiscate them, while the other Powers are only entitled to seize and detain them till the end of the war, or to requisition or destroy them subject to payment of an indemnity.

Art. 3 not having been accepted by Germany and Russia, Sect. 2 of Art. 4, hingeing on Art. 3, does not bind them either.

No. VIII. Germany and France did not agree to Art. 2. They therefore claim the right to place automatic contact mines along the enemy's coast or ports, "with the sole object of intercepting commercial navigation."

Great Britain made the general reservation that the simple fact of the Convention not prohibiting any act or proceeding does not legitimate it. She has therefore the right to contest the legality of placing floating contact mines on the high sea.<sup>1</sup>

No. IX. Great Britain, France, Germany, and Japan refused to accept Sect. 2 of Art. 1, forbidding bombardment on the sole ground that submarine contact mines are moored in front of an undefended port.

No. XIII. Germany did not agree to Arts. 11, 12, 13, and 20. Thus she does not agree to a neutral Power allowing belligerent ships to make use of its pilots (Art. 11). Nor does she agree to the rule obliging belligerent vessels not to stay in neutral ports more than twenty-four hours (Art. 12); nor to the rule that a belligerent ship in a neutral port or territorial waters at the outbreak of hostilities shall not remain there longer than twenty-four hours from receipt of notice by the neutral authorities (Art. 13); nor to the rule forbidding belligerent ships which have taken in fuel at the port of any neutral Power to renew their provision at any port of the same Power within three months (Art. 20).

The United States excluded Art. 23 entirely from their

<sup>1</sup> See full discussion of this subject in an article by the present writer in *Nineteenth Century* of October, 1914.

**HAGUE CONVENTIONS**—*continued*

ratification. Therefore it does not agree that a neutral Power may allow access to its ports and roadsteads by prizes, whether escorted or not, when they have been brought there to be left in sequestration pending the decision of a Prize Court.

As regards Sect. 2 of Art. 3, the United States understand it to imply that it is the *duty* of the neutral Power to demand the return of a ship captured within the neutral jurisdiction, and no longer within that jurisdiction.

Japan has not ratified Art. 19 or Art. 23. Thus she does not recognize the prohibition to revictual in neutral ports or roadsteads, except to complete the normal supplies in time of peace, or to take on board more fuel than will suffice for the purpose of reaching the nearest port of the ship's own country (Art. 19).

**HOSTAGES.**—The practice of taking hostages as a means of securing legitimate warfare was in former times very common. To ensure the observance of treaties, armistices, and other agreements depending on good faith, hostages were given or exchanged, whose lives were held responsible for any perfidy. This practice is now obsolete, and if hostages are nowadays taken at all they have to suffer captivity, and not death, in case the enemy violates the agreements in question. The Hague Rules do not mention hostages, and it must be emphasized that in modern times it is deemed preferable to resort to territorial guarantees instead of taking hostages.<sup>1</sup>

This, however, is not to be relied upon, and in the course of the war of 1914 the taking of hostages seems to have been amply resorted to.

**HOSTILITIES.**—Prohibited means of injuring the enemy are set out in Art. 23 of The Hague Regulations. The chief of

<sup>1</sup> "Manual of Land Warfare," Sect. 461.

**HOSTILITIES**—*continued*

these, of practical importance, is that no arms, projectiles, or material shall be used which may cause superfluous injury. Apart from this there are four declarations by which the contracting parties engage—

1. "To renounce in case of war amongst themselves the employment by their military and naval forces of any projectile of a weight below 400 *grammes* (approximately 14 ounces), which is either explosive or charged with fulminating or inflammable substances."<sup>1</sup>
2. "To abstain from the use of bullets with a hard envelope which does not entirely cover the core, or is pierced with incisions."<sup>2</sup>
3. "To abstain from the use of projectiles the sole object of which is the diffusion of asphyxiating or deleterious gases."<sup>3</sup>
4. "To prohibit, for a period extending to the close of the Third Peace Conference, the discharge of projectiles and explosives from balloons or by other new methods of a similar nature."<sup>4</sup>

See **POISON AND POISONED WEAPONS; TREACHERY; QUARTER; FLAG OF TRUCE; DESTRUCTION OF ENEMY PROPERTY.**

**INFORMATION BUREAU.** See **PRISONERS OF WAR, INFORMATION BUREAU.**

**INSTITUTE OF INTERNATIONAL LAW.**—This is an academy of international lawyers, consisting of sixty members and sixty associates, recruited by election; the members from those who have rendered services to International Law in the domain of theory or practice, and the associates from

<sup>1</sup> Declaration of St. Petersburg, 1868 (see p. 193).

<sup>2</sup> Hague Declaration, 1899 (see p. 195).

<sup>3</sup> Hague Declaration, 1899 (see p. 194).

<sup>4</sup> See **BALLOONS** as to non-ratification of this Declaration.

**INSTITUTE OF INTERNATIONAL LAW**—*continued*

those "whose knowledge may be useful to the Institute." In practice members are recruited from among the associates. It was formed in 1873, chiefly through the efforts of M. Rolin-Jaequemyns, a distinguished Belgian statesman. The official language of the Institute is French, and its plenary meetings are held wherever the members at the previous meeting decide to assemble. The matters it deals with are prepared during the intervals between the sessions, in permanent commissions, among which the whole domain of International Law is divided up. Under the direction of *rapporteurs*, or conveners, the commissions draw up reports and proposals, which are printed and distributed among the members some time before the plenary sittings at which they are to be discussed. If the members are not agreed, the subject is adjourned to another session, and still another, until they do agree. Thus the resolutions of the Institute have the authority attaching to a mature expression of the views of the leading international jurists of Europe. The administration of the Institute, which has considerable funds at its disposal, is committed to the President, the senior Vice-President, and the Secretary-General, who at present are Professor Harburger of Munich, Sir Thomas Barclay, and M. Albéric Rolin (Librarian of the Carnegie Palace of Peace at The Hague, and brother of the founder) respectively.

**INTERCOURSE BETWEEN ENEMY FORCES.**—Although the outbreak of war between States brings all the usual non-hostile intercourse to an end and closes the official means of intercommunication by diplomatic channels, it is sometimes unavoidable, and often convenient for commanders to open communication with the enemy for military purposes. Furthermore, humanity and convenience sometimes induce them for special reasons to



**INTERCOURSE BETWEEN ENEMY FORCES**—*continued*

grant certain relaxations in regard to the total cessation of the usual intercourse between the belligerent nations.

It is essential in all these non-hostile relations that the most scrupulous good faith should be observed by both parties.

The ordinary kinds of non-hostile relations are comprised under the headings of *parlementaires* (*q.v.*) and flags of truce (*q.v.*), armistices (*q.v.*), capitulations (*q.v.*), passports (*q.v.*) and safe-conducts (*q.v.*), safeguards (*q.v.*), and cartels (*q.v.*).

**INTERNMENT** is the immobilizing of prisoners of war as set out in Art. 5 of **REGULATIONS**,<sup>1</sup> or of belligerent refugees on neutral soil, as set out in Arts. 11 *et seq.* of Convention, No. V.<sup>2</sup>

**INVASION** need not be followed by occupation, although as a rule occupation is made coincident with invasion. Reconnoitring parties, flank guards, raiding or flying columns, and similar bodies which move on or retire after carrying out their special mission, cannot be said to occupy the country they have traversed. They occupy every locality while they are in possession, but such occupation ceases the moment they move on.<sup>3</sup> See **ANNEXATION ; OCCUPATION**.

**IRREGULAR TROOPS**.—The "Manual of Land Warfare," Sect. 20, classes militia and volunteer corps, when they do

<sup>1</sup> See Regs., Art. 42, p. 156.

<sup>2</sup> See p. 160.

<sup>3</sup> See "Manual of Land Warfare," Sect. 343.

**IRREGULAR TROOPS**—*continued*

not ordinarily form part of the army, as *irregular troops*. To possess belligerent rights, they must fulfil certain conditions,<sup>1</sup> which are as follows:

1. The condition that they must be "commanded by a person responsible for his subordinates," is completely fulfilled if the commander of the corps is regularly or temporarily commissioned as an officer, or is a person of position and authority, or if the members are provided with certificates or badges granted by the Government of the State to show that they are officers, N.C.O.'s, or soldiers, so that there may be no doubt that they are not partisans acting on their own responsibility.<sup>2</sup>

2. The condition relative to the necessity of a fixed distinctive sign recognizable at a distance is satisfied by the wearing of military uniform, but less than complete uniform will suffice. The distance at which the sign should be visible is left vague, but it is reasonable to expect that the silhouette of an irregular combatant in the position of standing against the skyline should be at once distinguishable from the outline of a peaceful inhabitant, and this by the naked eye of ordinary individuals, at a distance at which the form of an individual can be determined. As encounters now take place at ranges at which it is impossible to distinguish the colour or the cut of clothing, it would seem desirable to provide irregulars with a helmet, slouch hat, or forage cap, as being completely different in outline from the ordinary civilian head-dress. As it may be objected that a head-dress does not legally fulfil the condition that the sign must be fixed, something of the nature of a badge sewn on the clothing should therefore be worn in addition.<sup>3</sup>

3. The third condition provides that irregular combatants shall carry arms openly. They may therefore be refused the rights of the armed forces if it is found that their sole arm is a pistol, hand-grenade, or dagger concealed about the person, or a sword-stick, or similar weapon,

<sup>1</sup> Hague Regulations, Art. 1.

<sup>2</sup> "Manual of Land Warfare," Sect. 22.

<sup>3</sup> *Op. cit.*, Sects. 23 and 24.

**IRREGULAR TROOPS**—*continued*

or if it is found that they have hidden their arms on the approach of the enemy.<sup>1</sup>

4. The fourth condition requires that irregular corps shall conduct their operations in accordance with the laws and customs of war.<sup>2</sup>

**JOINT CAPTURE BY BRITISH AND ALLIED SHIPS OF WAR.**—In case of captures made jointly by British and allied ships of war, the duties of the respective commanders, unless regulated by treaty, are, says the official "Naval Prize Manual," as follows:

(a) If one ship is the actual and another the joint captor, the charge of the prize belongs to the commander of the ship which is the actual captor, and he should send her into a port of his own country for adjudication.

(b) If two or more ships are both actual captors, the charge of the prize belongs to the senior of the commanders, and he should send her into a port of his own country for adjudication.

Where any ship, says the Naval Prize Act, 1864, is taken by any British naval or naval and military forces while acting in conjunction with any forces of allies, a Prize Court has jurisdiction as in case of prize, and power, after condemnation, to apportion the due share of the proceeds<sup>3</sup> to the ally, the proportionate amount and the disposition of which share shall be such as may from time to time be agreed between Great Britain and her ally.<sup>4</sup>

**JUDGE ADVOCATE-GENERAL.**—This official was originally a member of the Government appointed to advise the

<sup>1</sup> *Op. cit.*, Sect. 26.

<sup>2</sup> Regs., Arts. 1 and 2, see p. 149.

<sup>3</sup> Read now: Bounty. See **PRIZE MONEY**.

<sup>4</sup> Prize Court Rules, Order 31, Sect. 35.

**JUDGE ADVOCATE-GENERAL**—*continued*

Sovereign on the legality of the proceedings of courts-martial. In 1892 the post was made non-political, and held by the President of the Probate, Divorce, and Admiralty Division till 1905, when the Judge Advocate-General became a permanent official, whose duty it is to advise the Secretary of War on all matters of law.

**JURISDICTION IN LAND EXPEDITIONS.**—Where, in an expedition of any British naval or naval and military forces against a fortress or possession on land, goods belonging to the enemy State or to a public trading company of the enemy exercising powers of government, are taken in the fortress or possession, or a ship is taken in waters defended by or belonging to the fortress or possession, the Prize Court has jurisdiction as to the goods or ship so taken, and any goods taken on board the ship, as in case of prize.<sup>1</sup>

**KRIEGSGEFAHR-ZUSTAND** under the German military organization is not a state of siege, but a state in which the Government, to use the official phrase, is entitled to take "certain precautionary measures." As a matter of fact, in the war of 1914 the precautionary measures affected the railway service and circulation of military and naval news by the Press, thus enabling the Government to secretly carry out the preliminaries of mobilization.

**LAND EXPEDITIONS.** See **JURISDICTION IN LAND EXPEDITIONS.**

<sup>1</sup> Naval Prize Act, 1864, Sect. 34, Prize Court Rules, Order 31.

**LETTERS OF MARQUE.** See **PRIVATEER.**

**LEVEE EN MASSE.**—If war were not confined to the official armed forces of the belligerent States, it would be a war of extermination, accompanied by all the excesses and barbarities which, with the advance of civilization, have now practically disappeared from warfare. The official armed forces—that is, the army, militia, and the volunteers, who wear distinctive emblems, etc. (see **BELLIGERENT FORCES**)—enjoy the privileges of the laws of war. Others, when caught, are not entitled to treatment as prisoners of war, but are liable to be shot as civilian combatants. There is, however, one exception—namely, the spontaneous rising of the inhabitants on the approach of an invader. It is dealt with in Art. 2 of The Hague Regulations (1907) respecting the Laws and Customs of War on Land, which provide that—

“ The population of a territory which has not been occupied, who, on the enemy's approach, spontaneously take up arms to resist the invading troops without having time to organize themselves in accordance with Art. 1, shall be regarded as belligerent, if they carry arms openly and respect the laws and customs of war.”

Such a rising is called a *levée en masse*.

The German military authorities, although Germany has ratified the Regulations, seem to dispute the right of *unorganized* forces to recognition as belligerents.<sup>1</sup>

**LIGHTHOUSE VESSEL.** See **PRIZE.**

**LOG-BOOK.** See **SHIP PAPERS.**

<sup>1</sup> See “ *Kriegsbrauch im Landkriege*,” 1902.

**LOOT.** See **PILLAGE.**

**LUXEMBURG, NEUTRALITY OF.**—By a treaty concluded on May 11, 1867, between Great Britain, France, Austria, Belgium, Italy, the Netherlands, Prussia, and Russia, the Grand-Duchy of Luxemburg was formed into a "perpetually neutral State," the H.C.P. undertaking to respect its neutrality, and collectively, with the exception of Belgium—itself a neutral State—placing it under their "collective guarantee."

**MANIFEST.** See **SHIP PAPERS.**

**MARSHAL OF THE ADMIRALTY COURT.**—The duties of this official are, in the first instance, to take possession of the prize as the duly appointed official of the Court. All warrants of the Court are served under his direction. Unless the Court otherwise orders, every commission for the appraisement or sale of property under the order of the Court has to be executed by the Marshal or his substitutes, and the proceeds of sale are received by him and paid into Court.

Whenever, by reason of distance or other sufficient cause, the Marshal cannot conveniently execute any instrument in person, he is entitled to employ some competent person as his substitute for this purpose. If in any port in the British Dominions there is no person appointed or employed to act as substitute of the Marshal, the principal officer of Customs of the port is deemed to be the substitute of the Marshal for the purposes of the execution and service of

**MARSHAL OF THE ADMIRALTY COURT**—*continued*

warrants and other instruments, the custody of prize, and for such other purposes as the President of the Admiralty Court may direct. Persons may be appointed or employed to act as substitutes of the Marshal for the above purposes in the ports of any ally in war of His Majesty, or for the purpose of the service of any process out of the jurisdiction. See Prize Court Rules, 1914, Rule 39.

**MARTIAL LAW** means the suspension of ordinary law and the government of the country or a portion of the country by military tribunals. It is usually announced by proclamation, although that is not absolutely necessary in cases of urgency, as the right to exercise this power depends upon circumstances.

It is customary, after the urgency has ceased to exist, to pass an Act of Indemnity in respect of matters done under martial law which otherwise might have been brought before the civil tribunals.

**MEDICAL PERSONNEL.**—Those engaged exclusively in the collection, transport, and treatment of the wounded and sick, as well as in the administration of medical units and establishments and the chaplains attached to armies, must be respected and protected under all circumstances. If they fall into the hands of the enemy, they are not to be treated as prisoners of war.<sup>1</sup>

There is no just clause for complaint of the violation of the Convention if in the execution of their duty members of the medical personnel and army chaplains

<sup>1</sup> Geneva Convention, Art. 9. See also Arts. 6 and 8 as regards Medical units, and Art. 10 as to Voluntary Aid Societies, and Art. 11 as to Societies belonging to neutral countries.

**MEDICAL PERSONNEL**—*continued*

are accidentally killed or wounded; they are only protected from deliberate attack.<sup>1</sup>

The privileges accorded naturally cease if medical units and establishments are made use of to commit acts harmful to the enemy—for instance, to shelter combatants, to conceal guns, or to carry on espionage—or if the personnel take part in a combat, in which case the offenders are exposed to punishment as war criminals.<sup>2</sup>

It is expressly permitted that the medical personnel and medical orderlies may be armed and may use their arms for their own defence, or for that of the patients under their charge, against marauders and such like.<sup>3</sup>

In some armies it is the practice to use trained soldiers as medical orderlies, while in others it is not;<sup>4</sup> it is therefore expressly permitted that a piquet or sentinels taken from a combatant arm may be used as a guard to a medical unit. This guard, however, must be furnished with an authority in due form, so as to ensure that the privileges of the guard of a medical unit, which are, whilst it is so employed, identically the same as those of the medical personnel, are not obtained improperly.

That arms and ammunition belonging to wounded men are found in a medical unit or hospital must not be construed to constitute an act harmful to the enemy. Every endeavour should, however, be made to hand over such articles to the proper department as early as possible.

**MERCHANT SHIPS AS CRUISERS.**—The laws, rights, and duties of war apply not only to the regular warships of the belligerents, but also to ships which have been con-

<sup>1</sup> "Manual of Land Warfare," Sect. 184.

<sup>2</sup> *Ibid.*, Sect. 186.

<sup>3</sup> Geneva Convention, Art. 8.

<sup>4</sup> "Manual of Land Warfare," Sect. 188.



**MERCHANT SHIPS AS CRUISERS—continued**

verted into warships in accordance with the following provisions of The Hague Convention, 1907, No. VII.:

1. No merchant ship transformed into a war vessel can have the rights and obligations attaching to this condition unless it is placed under the direct authority, the immediate control, and the responsibility of the Power whose flag it carries.

2. Merchant ships transformed into war vessels must bear the distinctive external signs of war vessels of their nationality.

3. The officer commanding must be in the service of the State, and properly commissioned by the competent authorities, and his name must appear in the list of officers of the combatant fleet.

4. The crew must be subject to the rules of military discipline.

5. Every merchant ship transformed into a war vessel is bound to conform, in its operations, to the laws and customs of war.

6. The belligerent who transforms a merchant ship into a war vessel must, as soon as possible, mention this transformation on the list of vessels belonging to its combatant fleet.

These provisions are far from satisfactory. It has been seen that there is nothing to prevent a belligerent from converting a merchant ship into a warship, and making captures before the enemy or a neutral State knows that such a conversion has taken place. Nor is there anything to prevent a surreptitious conversion on the high sea, or a reconversion at will.

The inclusion of this subject in the programme of The Hague Conference of 1907 was due mainly to the incident which arose out of the passage through the Dardanelles<sup>1</sup> in July, 1904, of the *Peterburg* and *Smolensk* as merchant vessels, and their subsequent armament on the high sea

<sup>1</sup> Under the Treaties of Paris (1856), the Treaty of London (1871), and the Treaty of Berlin (1878), the straits between the Mediterranean and the Black Sea are closed to vessels of war. See **DARDANELLES**.

**MERCHANT SHIPS AS CRUISERS—continued**

(Red Sea) as vessels of war. This was, however, a violation of Russia's treaty obligations.

Usage had already practically solved the only question of principle which seemed to arise in connection with the subject—namely, as to whether using merchant ships as cruisers is within the operation of the clause of the Declaration of Paris abolishing privateering. It seemed generally admitted that a privateer is a private vessel, the captain of which receives a commission (*letters of marque*) to carry on war and effect captures at his own risk and expense; and that a merchant vessel transformed into a cruiser, with a naval officer in command, flying the official naval colours, and acting under the direct orders and at the risk and expense of the official naval department, is not a privateer.

In the Spanish-American War, neither belligerent being a party to the Declaration of Paris, both were free to employ privateers against each other. For the purpose of cruising, however, the Spanish Government organized a service of "auxiliary cruisers of the navy," composed of "ships of the Spanish mercantile navy," and "subject to the statutes and jurisdiction of the navy." A similar force was organized by the United States under the command of officers of the navy. One of these was the *City of Paris*,<sup>1</sup> one of a class of steamers which, under the provisions of the United States Mail-Subsidy Act of March 3, 1891, were subject to be taken over by the United States Government as cruisers or transports. By a charter-party, entered into April 30, 1898, between the owning company<sup>2</sup> and the Secretary of the Navy, possession of the ship was transferred to the United States Government. She was then heavily armed, and converted into an auxiliary cruiser. The charter-party provided that the ship should be "manned, victualled, and supplied at the expense of the charterer." The charterer was also to pay all other expenses, and at the termination of the charter, which was

<sup>1</sup> She was known as the *Yale* while acting as a cruiser, and is now known as the *Philadelphia*.

<sup>2</sup> The American Line.

**MERCHANT SHIPS AS CRUISERS—continued**

to be at charterer's will, the ship was to be returned to the owner in good repair, less ordinary wear and tear. A supplementary agreement provided that the ship was "to be manned by regular officers and crew, and in addition thereto was to take on board two naval officers, a marine officer, and a guard of thirty marines, and was to be victualled and supplied with two months' provisions and about 4,000 tons of coal; the actual cost to the owner of such additional equipment and services to be reimbursed by the charterer upon bills to be certified by the senior naval officer on board." There were also stipulations protecting the owner against all expenses and liability, and a provision that, during the continuance of the supplementary agreement, the steamship was to be "under the entire control of the senior naval officer on board." Under these agreements the Government of the United States placed on board the ship a captain and a lieutenant of the navy and a marine guard of twenty-five enlisted men. "There were also on board 269 other persons, not commissioned by or regularly enlisted in the service of the United States, but comprising the ship's company, both officers and men, who were doing duty on board, and were borne on the books of the ship." On a question which arose as to the distribution of prize money, it was held<sup>1</sup> that she was neither a "vessel of the navy" nor a privateer, but came within the statutory class of vessels "not of the navy, but controlled by either executive department," and was, as an "armed vessel in the service of the United States," "entitled," in the words of the statute, "to an award of prize money in the same manner as if such vessel belonged to the navy."<sup>2</sup>

The question had already been raised in connection with the proposal of Prussia to create a "volunteer navy" in 1870. The French Government protested against it as contrary to the Declaration of Paris; but the then British

<sup>1</sup> The *Rita*, 89 Fed. Rep., 763.

<sup>2</sup> See Barclay, "Problems," etc., p. 204 *et seq.*; but most of these particulars are taken from Bassett Moore's "Digest of International Law," vol. vii., 1907, p. 542.

**MERCHANT SHIPS AS CRUISERS**—*continued*

Secretary for Foreign Affairs, Lord Granville, whose attention was drawn to the proposal, did not find that the conditions in which Prussia contemplated using the volunteer navy fell within the scope of the Declaration. Probably this was to some extent because Prussia had announced that she would not capture private property at sea. France would not agree to observe a like exemption, and Prussia then abandoned it also. Prussia, at the same time, abandoned also her scheme of forming a "volunteer navy." As the Prussian officers, though wearing naval uniform, were to have been ordinary merchant officers and crew, and were to have been furnished by the owners of the ships, the difference between such a cruiser and a privateer would have been less marked than in the case of the United States cruisers.<sup>1</sup>

The new system of having a naval officer in command of certain subsidized liners and mail-ships facilitates the transformation into cruisers. The Russian Government's so-called volunteer fleet was organized on a more or less similar plan.<sup>2</sup>

As I wrote before The Hague Conference of 1907:

"The most reasonable criterion for testing the application of the Declaration of Paris seems to be that any warship under the direct control and responsibility of a belligerent State, and bearing the outward marks of being so, is not privateer. As in the case of combatants on land,<sup>3</sup> some rules seem desirable to enforce the use of certain outward attributes, marking the belligerent character of merchant vessels transformed into cruisers."<sup>4</sup>

The question of the belligerent right to transform merchant into war vessels on the high sea gave rise to

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<sup>1</sup> See "Problems," etc., p. 205.

<sup>2</sup> See Smith and Sibley, "International Law" (second edition, 1907). These authors, in their interesting chapter (chap. ii.) on the subject, do not set up any practical criterion of distinction.

<sup>3</sup> See "Regulations for War on Land," Art. 1.

<sup>4</sup> Compare, however, Art. 24 of the Regulations for war on land permitting the continuance of *ruses of war*. In practice it is considered permissible even to use the flag of a neutral State to get within firing range of the enemy ship, a practice which it should be one of the first duties of the next Hague Conference, if it deals with naval war, to condemn. The whole question of what is legitimate as a ruse of war needs examination. (See "Problems," etc., p. 206.)

**MERCHANT SHIPS AS CRUISERS**—*continued*

much discussion and to contradictory opinions at both The Hague Conference of 1907 and the London Conference of 1909. In the preamble to the articles adopted in 1907 it is stated that "whereas the contracting Powers have been unable to come to an agreement on the question whether the conversion of a merchant into a war ship may take place on the high seas, it is understood that the question of the place where such conversion is effected remains outside the scope of this agreement."

The only ground on which a merchant vessel converted into a war vessel is not a privateer is that it is *bona fide* converted into a warship, with all the attendant belligerent obligations as well as rights. To masquerade, after conversion, as a merchant ship would be an act assimilable to piracy (*q.v.*).

**MERCHANT SHIPS, ARMED FOR DEFENCE.**—The subject is still controversial. See, for thoughtful discussion of it, Higgins, "Armed Merchant Ships," London, 1914.

**MILITARY ATTACHÉS.**—It is contrary to usage to take prisoners military attachés or diplomatic agents of neutral Powers who accompany an army in the field, or are found in a captured fortress, provided they are in possession of papers of identification and take no part in the hostilities. They may, however, be ordered out of the theatre of war, and, if necessary, handed over by the capturing Power to the Ministers of their respective countries.<sup>1</sup>

**MILITARY LAW** is the law which governs the soldier in peace and in war, at home and abroad. At all times and

<sup>1</sup> "Manual of Land Warfare," Sect. 6r.

**MILITARY LAW**—*continued*

in all places the conduct of officers and soldiers as such is regulated by military law. Military law is contained in the Army Act, and the Acts relating to the reserve and auxiliary forces, supplemented by the Rules of Procedure; by the King's Regulations; by other regulations—such, *e.g.*, as those for the Special Reserve and Territorial Force; by Royal Warrant—such, *e.g.*, as that relating to pay, promotion, etc.—and by Army Orders. The Army Act is brought into operation annually by a separate statute, generally known as the Army (Annual) Act. It is part of the statute law of England, and, with the considerable difference that it is administered by military courts and not by civil judges, is construed in the same manner and carried into effect under the same conditions as to evidence and otherwise as the ordinary criminal law of England. See **MARTIAL LAW**.

**MILITARY NECESSITY, or NECESSITY OF WAR**, is the necessity which a belligerent commander claims to justify him in violating the law and usage of nations or the national treaty obligations. The argument by which writers seek to justify it is that the object of war being to overcome the enemy and force him to sue for peace, he cannot on any ground whatsoever jeopardize the striking power of his army by considerations which would be beneficial to the adversary. *La raison de guerre*, as the older writers called it, *prime les lois de la guerre*, is a maxim of war. No wise commander, however, for fear of reprisals, would resort to it except in a case of the direst necessity.

In the European War of 1914 the violation of Belgian neutrality was alleged to be justified by necessity of war. The German armies, owing to the practical impossibility of breaking through the French lines of fortification, had, it was alleged, to choose a more vulnerable place on the frontier, which could only be reached by crossing Belgian territory. This reasoning fails because

**MILITARY NECESSITY**—*continued*

there was an alternative, and because the deliberate object of creating Belgium's neutrality, to which Germany was a party, was to secure her territory against invasion.

"A war conducted with energy," says the German "Kriegsbrauch im Landkriege," 1902, "cannot be confined to attacking the combatants of the enemy and its fortifications. It must at the same time be directed to the destruction of the whole of his intellectual and material resources. Humane considerations—*i.e.*, the sparing of human life and property—can only come into play in so far as the nature and object of the war permit.

"Although necessity of war (*Kriegsraison*) permits every warring State to employ all methods which promote the attainment of its object, practice has, nevertheless, taught that in his own interest restraint in the employment of certain methods of war and renunciation of others is desirable."<sup>1</sup>

**MILITARY OCCUPATION.** See **OCCUPATION, MILITARY.**

**MONITION.**—In Admiralty practice, a summons to appear under the old procedure was called a "monition"—a term inherited from a now obsolete procedure. Though still figuring in the Naval Prize Act of 1864, it is now superseded in current practice by the ordinary forms of writ.

**MORATORIA** are periods of delay, granted by Royal Proclamation, for the payment of debts and discharge of financial

<sup>1</sup> Where a belligerent commander violates the principle of the law of nations that private property shall be respected, he does so in the name of the "right of angary" (*q.v.*).

**MORATORIA**—*continued*

liabilities incurred before the commencement of a war, and which may fall due whilst the country is still in a state of war.

See *London Gazette* of August 4 and 7, and September 4, 1914; and see **POSTPONEMENT OF PAYMENTS ACT, 1914.**

**MOTOR-CARS BELONGING TO NEUTRAL PERSONS.** With respect to motor-cars and other means of transport belonging to neutral aliens residing in the United Kingdom, there is no distinction with respect to their impressment under Sect. 115 of the Army Act.

See **REQUISITIONS OF EMERGENCY.**

**MUSTER ROLL.** See **SHIP PAPERS.**

**NEUTRAL PERSONS ON BELLIGERENT SOIL, POSITION OF.**  
See **ALIENS, RESTRICTIONS ON.**

**NEUTRAL WATERS** include Territorial Waters (*q.v.*).

**NEUTRALITY.**—The law of neutrality is based on the principle that, belligerents having certain rights, neutrals have certain corresponding duties, and that, provided they fulfil these duties, they are entitled to remain, in all other respects, unmolested by the hostilities.

The subject thus embraces the whole of the relations between belligerent and neutral.



**NEUTRALITY**—*continued*

In practice neutral duties may be summed up as follows:

It is an absolute duty for the neutral State to abstain, in its corporate capacity, from all acts which may help the one belligerent to the disadvantage of the other.

To the extent of its ability it is also the duty of the neutral State to prevent its subjects from helping either belligerent.

And in other respects it is the duty of the neutral State to grant impartially to the one or the other belligerent any rights, advantages, or privileges which, according to the recognized usage of nations, are not considered as an intervention in the struggle.

On the other hand, the neutral State has rights which it is the duty of the belligerents to respect—viz., the right to immunity of its territory and territorial waters from operations of war, and the unhampered continuance of its State life, trade, and industry, subject only to the exercise by the belligerents of their acknowledged rights.

The position of neutrals is now regulated by two of The Hague Conventions (1907)—viz., No. V., dealing with their rights and duties in war on land, and No. XIII., with their rights and duties in naval war.

1. NEUTRAL DUTIES ON LAND.—It is the neutral State's duty not to allow (a) bodies of combatants to be formed or recruiting offices to be opened on territory of a neutral Power for the benefit of the belligerents;<sup>1</sup> (b) or troops or convoys of munitions of war or provisions to be sent through their territory.<sup>2</sup> It is not, however, responsible where individuals separately pass the frontier to place themselves at the disposal of either belligerent. Nor is it bound to prevent exportation or transit for the account of either belligerent of arms, munitions of war, and, in general, of anything which may be useful for an army or a fleet; or to prohibit or restrict the use, for belligerents, of telegraphic or telephonic cables, or of wireless telegraphy apparatus,

<sup>1</sup> Art. 4.

<sup>2</sup> Arts. 2 and 5.

**NEUTRALITY—continued**

which are its property, or that of companies or private individuals; provided always that any prohibitive or restrictive measures adopted by it relative to the matters above mentioned shall be applied uniformly to both belligerents, not only in its own case, but also in that of companies or private individuals owning telegraphic or telephonic cables or wireless telegraphic apparatus.<sup>1</sup>

It is also the neutral State's duty, if it allows the presence on its territory of troops belonging to the belligerent armies, as far as possible to keep them distant from the area of hostilities. It may keep them in camps, and even shut them up in fortified places, or other places suitable for this purpose. Whether officers may be left at liberty on parole not to leave the neutral territory without authorization is a matter for the neutral State's discretion.

When peace is established, the cost of keeping the prisoners has to be reimbursed.

Escaped prisoners of war are left at liberty, though the neutral State may appoint a place of residence for them. This applies also to prisoners of war brought by troops taking refuge on neutral territory.

A neutral State may authorize the passage through its territory of wounded or sick belonging to the belligerent armies, on condition that the trains which carry them transport none of the fighting forces or materials of war. In such a case the neutral State is bound to take the necessary steps to ensure safety and control. Where the wounded or sick, brought in these circumstances into neutral territory by one of the belligerents, belong to the enemy, they must be detained by the neutral State in such manner that they cannot again take part in the hostilities.<sup>2</sup>

The Geneva Convention (*q.v.*) applies to sick and wounded interned on neutral territory.

2. **BELLIGERENT DUTIES ON LAND.**—The first of these is to respect the neutral's territory. "Neutral territory," says Art. 1 of the Convention, "is inviolable."

And the act, says Art. 10 of the Convention, by a neutral

<sup>1</sup> Arts. 6 to 9.

<sup>2</sup> Arts. 11 to 14.

**NEUTRALITY—continued**

State, of resisting any violation of its neutrality, even by force of arms, cannot be regarded as an act of hostility.

Among other things, belligerents are forbidden to make use of the territory of a neutral State to instal a radio-telegraphic station or any apparatus intended to serve as a means of communication with the belligerent forces on land or sea, or to make use of any installation of like nature, erected by them before the war on the territory of a neutral State, for an exclusively military purpose, and which has not been opened to the service of public correspondence.<sup>1</sup>

As regards *neutral persons*, natives of a State which does not take part in the hostilities are considered neutral. A neutral person cannot, however, take advantage of his neutrality, if he commits hostile acts against a belligerent, or if he commits acts in favour of a belligerent—for instance, by voluntarily taking service in the army of one of the parties.<sup>2</sup>

*A loan by a neutral person to one of the belligerents* is not considered an act committed in favour of one of the belligerents, provided the lender inhabits neither the territory of the other Party nor territory occupied by it.<sup>3</sup>

*Railway property* coming from the territory of neutral States, whether it belongs to these States or to companies or to private persons, cannot be requisitioned or utilized by a belligerent, except under pressure of absolute necessity. Such property must be returned to its country of origin as soon as possible.

The neutral State, in case of necessity, may keep and utilize to the same extent property coming from the territory of the belligerent State.

An indemnity, proportionate to the amount of the property utilized and the duration of utilization is payable in both cases.<sup>4</sup>

**3. NEUTRAL DUTIES IN NAVAL WAR.**—Neutrality in naval warfare is regulated by Convention No. XIII. (1907) in the following manner:

Art. 3.

<sup>1</sup> Art. 17.

<sup>2</sup> Art. 18.

<sup>4</sup> Art. 19.

**NEUTRALITY**—*continued**A neutral State is bound—*

Not to permit any violation by either belligerent of its sovereign rights;<sup>1</sup>

Not to allow a Prize Court to be constituted by either belligerent on its territory, or on a vessel in its waters.<sup>2</sup>

Though it may allow access to its ports and roadsteads to prizes, whether escorted or not, when they have been brought there to be left in sequestration pending the decision of a Prize Court;<sup>3</sup>

Not on any ground whatever, either directly or indirectly, to supply to a belligerent Power ships of war, or munitions, or material of war of any kind;<sup>4</sup>

To use the means at its disposal not to allow within its jurisdiction the equipping or arming of any vessel which it has a reasonable suspicion of being destined to act as a cruiser or to join in hostile operations against a Power with which it is at peace;

To exercise the same diligence to prevent the departure out of its jurisdiction of any vessel intended to serve as a cruiser or to take part in hostile operations, and which, within the said jurisdiction, may have been adapted either wholly or in part for warlike purposes.<sup>5</sup>

It must apply equally to the two belligerents the restrictions, conditions, or interdictions specified by it relating to admission to its ports, roadsteads, or territorial waters, with respect to ships of war or their prizes, though it may forbid access to its ports and roadsteads to any belligerent vessel which has neglected to comply with the orders and directions issued by it, or committed a breach of neutrality.<sup>6</sup>

If a Power which has received notice of the commence-

<sup>1</sup> Art. 1.

<sup>2</sup> Art. 4.

<sup>3</sup> XIII., Art. 23. The same article further provides that the neutral may have the prize conducted to any other of its ports, and furthermore that if the prize is escorted by a ship of war, the officers and men placed on board by the captor are allowed to go on board the escorting ship. If the prize is navigating alone, the personnel placed on board is set at liberty.

<sup>4</sup> Art. 6.

<sup>5</sup> Art. 8.

<sup>6</sup> Art. 9.

**NEUTRALITY—continued**

ment of hostilities learns that a ship of war of a belligerent is in one of its ports, roadsteads, or territorial waters, it must notify the said ship that it has to leave within twenty-four hours, or within any other time prescribed by the local law.<sup>1</sup>

When ships of war of two belligerents are at the same time in a neutral port or roadstead, it must see that twenty-four hours at least elapse between the departure of the ship of either belligerent and that of the other, the order of departure to be regulated by the order of arrival, unless the vessel arriving first is entitled to a prolongation of the legal period of its stay.<sup>2</sup>

Nor may a belligerent ship of war be allowed to leave a neutral port or roadstead until at least twenty-four hours after the departure of a merchant vessel carrying the flag of its adversary.<sup>3</sup>

In default of other special provisions in the laws of the neutral Power, the number of ships of war of a belligerent which may be at the same time in any one of its ports or roadsteads must not exceed three.<sup>4</sup>

If, in spite of notice from the neutral authority, a belligerent ship of war does not leave a port in which it has no right to remain, the neutral Power has the right to take such steps as it may think proper to render the ship incapable of going to sea during the continuance of the war, and the commander of the ship must facilitate the taking of such steps.<sup>5</sup>

It must also see that in its ports and roadsteads belligerent ships of war only repair damage to the extent indispensable for their seaworthiness, and do not in any way increase their military strength. It will ascertain

<sup>1</sup> Art. 13.

<sup>2</sup> XIII., Art. 16.

<sup>3</sup> XIII., Art. 16.

<sup>4</sup> XIII., Art. 15.

<sup>5</sup> XIII., Art. 24. The same article provides that when a belligerent ship is detained by a neutral Power, the officers and crew are also detained, and that the officers and crew thus detained may be left on board the ship or lodged either on board another vessel or on shore, and be subjected to such restrictive measures as are considered necessary, sufficient men being left on board the ship to keep it in order. Officers, however, may be released on giving their parole not to leave the neutral territory without permission.

**NEUTRALITY**—*continued*

the nature of the repairs to be executed, and that they be carried out as rapidly as possible.<sup>1</sup>

When a vessel has been captured in its territorial waters, if the prize is still within its jurisdiction, it must use all means in its power to effect the release of the prize and its officers and crew, and intern the crew placed on board by the captor; if the prize is outside the jurisdiction of the neutral Power, it must request the capturing Government to release the prize with its officers and crew.<sup>2</sup>

Nor may it allow a belligerent ship to renew its supply of fuel in any of its ports within three months of obtaining its previous supply thereat.<sup>3</sup>

*Neutral powers are not bound to forbid—*

The exportation or transit, for the account of either belligerent, of arms, munitions of war, or, in general, of anything which may be useful to an army or a fleet;<sup>4</sup>

The use by warships of belligerents of its licensed pilots;<sup>5</sup>

Simple passage through its territorial waters of belligerent ships of war and of their prizes.<sup>6</sup>

*Belligerent duties are—*

Generally to lend themselves to the fulfilment of the foregoing neutral duties;

To respect the sovereign rights of neutral States, and to abstain, either on the territory or in neutral waters, from any act which might constitute on the part of the neutral State permitting it a non-observance of its neutrality;<sup>7</sup>

When a vessel has been captured in the territorial waters of a neutral Power, at the request of the neutral Power, to release the prize with its officers and crew;<sup>8</sup>

Not to exercise any acts of hostility, capture, or right of

<sup>1</sup> XIII., Art. 17.

<sup>2</sup> XIII., Art. 20.

<sup>3</sup> XIII., Art. 11. See **HAGUE CONVENTIONS**.  
ratified this provision.

<sup>4</sup> XIII., Art. 10.

<sup>5</sup> XIII., Art. 1.

<sup>6</sup> XIII., Art. 3.

<sup>7</sup> XIII., Art. 7.

<sup>8</sup> XIII., Art. 7. Germany has not

<sup>9</sup> XIII., Art. 3.

**NEUTRALITY**—*continued*

visit and search in the territorial waters of a neutral Power;<sup>1</sup>

Not to make neutral ports and waters the base of naval operations against their adversaries, especially by installing radio-telegraphic stations or any apparatus which may serve as means of communication with belligerent forces on sea or on land;<sup>2</sup>

In default of other special provisions in the laws of a neutral Power, not to allow their ships of war to remain in the ports or roadsteads or in the territorial waters of the said Power for more than twenty-four hours, except in cases specially permitted;<sup>3</sup>

Nor to prolong their stay in a neutral port beyond the legal period, except for the purpose of repairing damage or on account of stress of weather;<sup>4</sup>

Nor to make use of neutral ports, roadsteads, or territorial waters for the purpose of renewing or increasing their military equipment or armament, or completing their crews.

*Belligerent ships are permitted—*

To complete in neutral ports their normal supplies of food as in time of peace, and to take on board the fuel necessary for the purpose of reaching the nearest port of their country;<sup>5</sup>

To bring a prize into a neutral port by reason of its unseaworthiness, or of stress of weather, or of insufficiency of fuel or provisions, subject to leaving again as soon as the cause of its entry has ceased. If it does not do so, on receiving notice by the neutral Power it must leave imme-

<sup>1</sup> XIII., Art. 2.

<sup>2</sup> XIII., Art. 5.

<sup>3</sup> XIII., Art. 12. See the cases in which a longer stay is permitted, Art. 14.

<sup>4</sup> XIII., Art. 14.

<sup>5</sup> XIII., Art. 19. The same Article also provides that they may also take in fuel sufficient to fill up their bunkers, if they are in a neutral country which has adopted this method of fixing the amount of fuel to be supplied; also that if, according to the law of the neutral Power, ships may only receive coal twenty-four hours after their arrival, the legal period of their stay is prolonged for twenty-four hours. Art. 20, however, provides that, if they have taken in fuel in the port of a neutral Power, they cannot renew their supply in a port of the same Power within three months.

**NEUTRALITY**—*continued*

diately; and in the event of its not complying therewith, it should submit to its being released with its officers and crew, and the internment of the crew placed on board by the captor.

**NEUTRALIZED AREA**—*Congo Basin*.—Under the General Act of Berlin of February 26, 1885,<sup>1</sup> provision was made (Arts. 10, 11, and 12) for the neutrality of territories included in the conventional basin of the River Congo. This conventional basin is bounded by the watersheds (or mountain ridges) of the adjacent basins—namely, in particular, those of the Niari, the Ogowé, the Schari, and the Nile, on the north; by the eastern watershed line of the affluents of Lake Tanganyika on the east; and by the watersheds of the basins of the Zambesi and the Logé on the south. It therefore comprises all the regions watered by the Congo and its affluents, including Lake Tanganyika, with its eastern tributaries. It includes also the maritime zone extending along the Atlantic Ocean from the parallel situated in 2° 30' of south latitude to the mouth of the Logé. The northern boundary follows the parallel situated 2° 30' from the coast to the point where it meets the geographical basin of the Congo, avoiding the basin of the Ogowé, to which the provisions of the Act do not apply. The southern boundary follows the course of the Logé to its source, and thence passes eastwards till it joins the geographical basin of the Congo.

In the zone stretching eastwards from the Congo Basin, as above defined, to the Indian Ocean from 5° of north latitude, to the mouth of the Zambesi in the south, from which point the line of demarcation ascends the Zambezi to five miles above its confluence with the Shiré, and then

<sup>1</sup> All the States engaged in the war of 1914 are Parties to the General Act.



**NEUTRALIZED AREA**—*continued*

follows the watershed between the affluents of Lake Nyassa and those of the Zambezi, till at last it reaches the watershed between the waters of the Zambezi and the Congo.

By Arts. 10 and 11 of the Act the H.C.P. bound themselves to respect the neutrality of the territories, or portions of territories, belonging to the said countries, comprising therein the territorial waters, so long as the Powers which exercise, or shall exercise, the rights of Sovereignty or Protectorate over those territories fulfil the duties which neutrality requires.

In case a Power exercising rights of Sovereignty or Protectorate in the above-mentioned countries should be involved in a war, then the H.C.P. bound themselves to lend their good offices in order that the territories belonging to this Power and comprised in the conventional zone, by the common consent of this Power and of the other belligerent or belligerents, be placed during the war under the rule of neutrality, and considered as belonging to a non-belligerent State, "the belligerents thenceforth abstaining from extending hostilities to the territories thus neutralized, and from using them as a basis for warlike operations."

As regards States whose entire territories are in the free zone, such as the then newly formed Free State of the Congo, the British delegate explained that the engagement of the Signatory Powers to respect their neutrality "does not involve a guarantee, but it entails a moral obligation."<sup>1</sup>

In case a serious disagreement originating on the subject of, or in the limits of, the above-mentioned territories should arise between any Signatory Powers, or the Powers which may become parties to it, these Powers bound themselves, before appealing to arms, to have recourse to the mediation or arbitration, as the case might require, of one or more of the friendly Powers.<sup>2</sup>

<sup>1</sup> Sir E. Malet's letter to Earl Granville, dated Berlin, February 21, 1885.

<sup>2</sup> See more fully Barclay, "Problems of International Practice and Diplomacy," London, 1907, pp. 57, 76.

**NEUTRALIZED STATES.** See **BELGIUM, LUXEMBURG, SWITZERLAND.**

**NEWSPAPER CORRESPONDENTS.**—Persons who follow an army without directly belonging to it, such as newspaper correspondents and reporters, and fall into the enemy's hands, have a right, if detained, to be treated as prisoners of war, provided they can produce a certificate from the military authorities of the army they were accompanying (Regs., Art. 13).

**NON-COMBATANTS,** provided they conform to the conditions and laws of war, are entitled in case of capture to treatment as prisoners of war.<sup>1</sup>

**OATHS** in Prize Proceedings. See p. 237.

**OCCUPATION, MILITARY.**—"Territory is considered as occupied," says Art. 42 of The Hague Regulations, concerning the laws and customs of war on land, "when it is actually placed under the authority of the hostile army. The occupation applies only to the territory where such authority is established and is in a position to assert itself."

This provision, it is seen, forbids fictitious military occupations, just as the Declaration of Paris (1856) forbids fictitious blockades, and the General Act of Berlin (February 26, 1885), within the scope of its application, fictitious annexations of territory (Art. 34).

Occupation has not the effects of annexation (*q.v.*), and, in fact, the conditions set out in the Regulations are deliberately intended to protect the population of invaded territory against being treated as if annexation had taken place, Arts. 43 to 50 providing that—

<sup>1</sup> See Regs., Art. 1, p. 149.

**OCCUPATION, MILITARY—continued**

"Legal authority having *de facto* passed into the hands of the occupant, the latter shall take all steps in his power to re-establish and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country"; that any compulsion of the population of occupied territory to take part in military operations against its own country or any pressure on it to take an oath of fidelity to the hostile Power is prohibited; that if in the territory occupied the occupant collects taxes, dues, and tolls imposed for the benefit of the State, he shall do so, as far as possible, in accordance with the rules and mode of assessment in force, and shall be bound to defray the expense of administering the occupied territory in accordance with the existing laws; lastly, that no general penalty, pecuniary or otherwise, can be inflicted on the population on account of the acts of individuals for which it cannot be regarded as collectively responsible.

The importance of these provisions for the protection of the inhabitants of the occupied territory must not be undervalued.

If annexation could be decreed by an invader without the consent of the invaded Power, the whole population of the annexed territory might at once be made to pass under the allegiance of the invading sovereign, its legitimate acts of defence be made rebellious and punishable as such, and the troops opposed to the invader be made to forfeit their right to be treated as belligerent.<sup>1</sup>

The chief points connected with military occupation may be summed up as follows:

1. The occupation to be valid must be effective (Art. 42).
2. The occupying authority, "unless absolutely prevented," must respect the laws in force in the occupied territory.<sup>2</sup>
3. The character of the occupation as such forbids the occupying authority to treat the inhabitants as having

<sup>1</sup> See, on the annexation decreed by Italy of Tripolitana and Cyrenaica, and on that of the territory of the South African Republic in 1900, Barclay, "Turco-Italian War and its Problems," p. 45 *et seq.*, 1912.

<sup>2</sup> Art. 43.

**OCCUPATION, MILITARY**—*continued*

changed their allegiance. It is therefore forbidden to force the inhabitants to give information about the army of their country or about its means of defence.<sup>1</sup> This provision, it is true, has not been ratified by Germany, Russia, Austria-Hungary, or Japan,<sup>2</sup> but the provision of Art. 23 *in fine* forbidding belligerents in any form whatsoever to force nationals of the adversary to take part in war operations against their country was alleged at The Hague Conferences to cover the terms of Art. 44.<sup>3</sup>

4. Private property must be respected, subject, however, to requisitions (*q.v.*) and contributions (*q.v.*), and pillage is forbidden.<sup>4</sup>

5. Taxes may be collected, but out of their proceeds the ordinary local government expenditure must be defrayed.<sup>5</sup>

6. Requisitions must be in proportion to the local resources,<sup>6</sup> and contributions in money must be levied for no other purpose than the wants of the army of occupation and the expenses of administration.<sup>7</sup>

7. Objects serviceable in war belonging to the State may be seized,<sup>8</sup> but in the case where such objects belong to the local authorities<sup>9</sup> or private persons,<sup>10</sup> they must be restored, and indemnities settled in the terms of peace.<sup>11</sup>

8. Public edifices, etc., must be preserved as trust property,<sup>12</sup> and all property devoted to public worship, education, charity, arts, and science with the respect due to private property.<sup>13</sup>

9. Submarine cables (*q.v.*) may be destroyed only in case of urgent necessity.<sup>14</sup>

**PARLEMENTAIRES** are persons who are sent as agents in non-hostile intercourse between belligerent armies, such as for

<sup>1</sup> Arts. 44 and 45.

<sup>2</sup> See **HAGUE CONVENTIONS**.

<sup>3</sup> It is, however, doubtful whether this can be relied upon, in view of the express reservation of Art. 44.

<sup>4</sup> Arts. 46, 47, 49, 51, and 52.

<sup>5</sup> Art. 48.

<sup>6</sup> Art. 52.

<sup>7</sup> Art. 49.

<sup>8</sup> Art. 53.

<sup>9</sup> Art. 56.

<sup>10</sup> Art. 53.

<sup>11</sup> Art. 53.

<sup>12</sup> Art. 55.

<sup>13</sup> Art. 56.

<sup>14</sup> Art. 54.

**PARLEMENTAIRES**—*continued*

the conveyance of a letter or message, summons to surrender, or *pourparlers* for suspension of hostilities, proposal for exchange of prisoners, etc. While performing their duties, they are entitled to absolute inviolability. To enjoy this inviolability, however, they must present themselves under the cover of a white flag.<sup>1</sup>

**PAROLE.**—Prisoners of war may be set at liberty on parole. if the laws of their country permit. In such cases they are bound, on their personal honour, scrupulously to fulfil their engagements, both as regards their own Government and the enemy Government; and their own Government is bound neither to require of nor to accept from them any service incompatible with the parole.

It is advisable that the form of parole should state definitely the conditions under which the prisoner is released—for instance, whether he is not permitted to accept any appointment in his own country or in the colonies which may be of direct or indirect assistance to it; or whether all and every performance of duty is forbidden. Indirect assistance might include office work, work upon fortifications of places not besieged, raising or instructing recruits, fighting enemies who are not allies of the belligerents to whom he has given parole, repressing civil insurrections, or carrying out civil or diplomatic functions.<sup>2</sup>

The parole should be in writing, and be signed by the prisoner.

A prisoner of war cannot be compelled to accept his liberty on parole, nor is the hostile Government compelled to accede to the request of a prisoner to be set at liberty on parole.

Prisoners of war liberated on parole and recaptured bearing arms against the Government to which they have pledged their honour, or against allies of that Government, forfeit their right to be treated as prisoners of war.

<sup>1</sup> Regs., Art. 32.

<sup>2</sup> "Manual of Land Warfare." Sect. 98.

**PASSPORTS.**—A passport is a document given by a commander of belligerent forces to enemy subjects or others to enable them, within a limited or unlimited period, to travel free and unmolested within the district occupied by his forces. The passport may permit the bearer to travel either alone or accompanied by friends, and with or without servants and effects. It may be granted by a commander on his own initiative, or by arrangement with the enemy or with a neutral Power.

A passport in naval practice is the official voucher every merchant ship should carry certifying her nationality. It has, in general, the same character as a passport granted to an individual.

See **SHIP PAPERS**.

**PILLAGE** of a town or place, even when taken by assault, is prohibited, whether by land forces<sup>1</sup> or by naval forces.<sup>2</sup> Pillage is the obtaining of booty at the expense of private property.

## **PILOT.**

**PIRACY** is the attack on the high sea of any vessel by an armed vessel, not authorized or recognized by any State.

The older commentators considered that, in addition to unauthorized or unrecognition by a State, robbery was of the essence of piracy.<sup>3</sup> W. E. Hall, however, defines it as an act of violence done upon "the ocean, or unappropriated lands, or within the territory of a State through descent

<sup>1</sup> Regs., Arts. 28 and 47.

<sup>2</sup> No. IX., Art. 7.

<sup>3</sup> See Wheaton, Kent, Ortolan, Phillimore, Heffter.

**PIRACY**—*continued*

from the sea, by a body of men acting independently of any politically organized society."

Professor von Liszt, of Berlin,<sup>1</sup> also defines piracy as an act of unlawful violence committed on the high sea by the officers and crew (*Mannschaft*) of a private ship against another ship.

The legal sense of piracy, says Professor von Liszt, whose handbook of International Law is acknowledged throughout Germany as the most authoritative German exposition of the subject, is not covered by the notion of robbery on the high sea. Every act of violence on the high sea is piracy in International Law. Thus, the killing or wounding of men, even when there is no capture of foreign property; also the injury or destruction of foreign property, even when there is no intention to appropriate it.

Piracy being a crime, not against any particular State, but against the subjects and ships of all States, is punishable in the competent court of any country where the offender may be found or into which he may be carried.

Pirates cannot be killed lawfully without trial, except in battle.

As regards piracy in time of war, if the view taken of its nature by Professor von Liszt and W. E. Hall is correct, the laying of mines on the high sea is an illegal act of violence which may be regarded by neutral States as an act of piracy.

There are other reasons for the condemnation of the practice as between belligerents.<sup>2</sup>

**POISON AND POISONED WEAPONS.**—The use of poison and poisoned weapons is forbidden. By analogy, this prohibition has been extended to the use of means calculated to spread contagious diseases.<sup>3</sup>

<sup>1</sup> "Das Völkerrecht," ninth edition, Berlin, 1913, p. 202.

<sup>2</sup> See **FLOATING MINES**.

<sup>3</sup> Regs., Art. 23. See "Manual of Land Warfare," Sect. 43.

**PORT OF ADJUDICATION.**—By a port of adjudication in prize law is meant a port to which the vessel and her cargo are sent in order that they may lie there in safety pending proceedings for adjudication.

The port of adjudication, says the official Manual of Prize Law, should, if possible, be a British port, whether in the United Kingdom or elsewhere in the British Dominions; if not, an allied port; but in the latter case it will be necessary, in order that proceedings for adjudication may be duly instituted, for the commander to forward the witnesses, together with the vessel's papers and necessary affidavits, in charge of one of the officers of his ship to the nearest British Prize Court. None but a British or an allied port can be a proper port of adjudication, although in cases of necessity resort may be had to a neutral port.

From the many ports which are proper ports of adjudication the commander, continues the Manual, should select the one which, upon a consideration of all the circumstances, seems the most convenient. He should have regard in the first place to the interests of all parties concerned—namely, the owners of the vessel, the owners of the cargo, and the captors. These interests require, amongst other things—That the port should be capable of giving safe harbourage to the vessel; that it should be large enough to admit the vessel, without undelivery of her cargo; that it should offer easy communication with the Prize Court before which the case is to be adjudicated; that it should be as near as possible to the place of capture.

If the commander, in selecting a port of adjudication, unreasonably disregard the interests of the owners of the vessel and cargo, he will be liable for damages.

**POSTPONEMENT OF PAYMENTS ACT, 1914,** confirms Proclamations of August 2 and 6, and September 1 (see *London Gazette* of August 4 and 7 and September 4).



**PRE-EMPTION.**—Where a ship of a foreign nation passing the seas laden with naval or victualling stores intended to be carried to a port of the enemy is taken and brought into a British port, and the purchase for His Majesty's service of the stores on board the ship appears expedient without condemnation thereof in a Prize Court, the Admiralty may purchase all or any of the stores on board the ship.

**PRESS, CONTROL OF.**—Necessities of national defence or the requirements of military operations authorize Governments and military commanders to impose such prohibitions and restrictions as may be deemed requisite according to circumstances.

**PRISONERS OF WAR** are dealt with very fully in The Hague Regulations respecting the Laws and Customs of War on Land (1907), and, so far as it goes, it is a codification of the most enlightened contemporary practice.<sup>1</sup>

In the first place, prisoners of war are prisoners of the enemy Government, and not of the military body, authority, or individual who captures them.

*Upkeep.*—The Government into whose hands they have fallen is bound to maintain them, and to do so, as regards food, quarters, and clothing, on the same footing as the troops of the Government which has captured them (Art. 7).

*Hiring of their Services.*—On the other hand, the State may utilize the labour of prisoners of war according to their rank and aptitude, with the exception of the officers, and they may be authorized to work for private persons, or on their own account.

See text of the Regulations, p. 149 *et seq.*

**PRISONERS OF WAR**—*continued*

When the work is for private persons, the conditions are settled in agreement with the military authorities.

The wages of the prisoners go towards improving their position, and the balance is paid them at the time of their release, after deduction of the cost of their maintenance (Art. 6).

*Officers.*—Officers receive the full pay to which officers of the same grade in the country where they are detained are entitled, the amount to be repaid by their Government. (Art. 17).

*Religion.*—Prisoners of war shall enjoy every latitude in the exercise of their religion, including attendance at their own church services, provided only they comply with the regulations for order and police issued by the military authorities (Art. 18).

*Imprisonment.*—They are subject to the laws, regulations, and orders in force in the army of the State into whose hands they have fallen (Art. 8), and they may be interned in a town, fortress, camp, or any other locality, and bound not to go beyond certain fixed limits; but they can only be confined as an indispensable measure of safety, and only so long as circumstances necessitating this measure shall endure (Art. 5).

*Escape.*—Escaped prisoners, recaptured before they have succeeded in rejoining their army, or before quitting the territory occupied by the army that captured them, are liable to disciplinary punishment; but if, after succeeding in escaping, they are again taken prisoners, they are not liable to any punishment for the previous flight.

*Parole.*—Prisoners of war may be set at liberty on parole if the laws of their country authorize it, and, in such a case, they are bound, on their personal honour, scrupulously to fulfil, both as regards their own Government and the Government by whom they were made prisoners, the engagements they have contracted.

In such cases their own Government shall not require of, nor accept from, them any service incompatible with the parole given (Art. 10).

**PRISONERS OF WAR—continued**

A prisoner of war, however, cannot be forced to accept his liberty on parole; similarly the hostile Government is not obliged to assent to the prisoner's request to be set at liberty on parole (Art. 11).

Any prisoner of war, who is liberated on parole and recaptured, bearing arms against the Government to whom he had pledged his honour, or against the allies of that Government, forfeits his right to be treated as a prisoner of war, and can be brought before the Courts of Justice (Art. 12).

*Information Bureau.*—A Bureau for information relative to prisoners of war is instituted, at the commencement of hostilities, in each of the belligerent States and, when necessary, in the neutral countries on whose territory belligerents have been received. This Bureau is intended to answer all inquiries about prisoners of war, and is furnished by the various services concerned with all the necessary information relating to internments and changes, to releases on parole, to exchanges, to escapes, to admissions to hospital, as well as other particulars, to enable it to keep from day to day an individual return for each prisoner of war. The Bureau must enter on this return the regimental number, the name and Christian name, age, place of origin, rank, corps, wounds, date and place of capture, of internment, the wounds, and the death, as well as any special observations. Each return shall be forwarded to the Government of the other belligerent after the conclusion of peace.

It is also the duty of the Information Bureau to receive and collect all objects of personal use, valuables, letters, etc., found on the battlefields or left by prisoners who have died in hospital or ambulance, and to transmit them to those interested (Art. 14).

The Bureau has the privilege of free postage. Letters, money orders, and valuables, as well as postal parcels destined for the prisoners of war or despatched by them, are free of all postal rates, both in the countries of origin and destination, as well as in those they pass through.

Gifts and relief in kind for prisoners of war are admitted

**PRISONERS OF WAR—continued**

free of all duties of entry and others, as well as of payments for carriage by Government railways (Art. 16).

A well organized Information Bureau has been established by the British Government in accordance with this provision under the direction of Sir Paul Harvey at 49, Wellington Street, Strand, London.

*Relief Societies.*—Relief societies for prisoners of war, which are regularly constituted in accordance with the law of the country with the object of serving as the intermediary for charity, receive from the belligerents for themselves and their duly accredited agents every facility, within the bounds of military requirements, for the effective accomplishment of their task. Delegates of these societies may be admitted to the places of internment for the distribution of relief, as also to the halting-places of repatriated prisoners, if furnished with a personal permit by the military authorities, and on giving an engagement in writing to comply with all regulations for order and police (Art. 15).

*Prisoners' Property.*—All personal belongings of prisoners of war, except arms, horses, and military papers, remain their property (Art. 4). In practice personal belongings are understood to include military uniform, clothing and kit required for personal use, although technically they may be the property of Government.<sup>1</sup>

As regards the *crews of enemy merchant ships* captured by a belligerent, a distinction is made by Hague Convention, No. XI., between neutral and enemy crews. If neutral, they are discharged subject to the officers undertaking in writing not to serve on an enemy vessel during the war; if enemy, subject to officers and crew undertaking in writing not to enter any service relating to the operations of war. Notice of the undertaking in the latter case has to be given to the belligerent in question (see Art. 7, p. 172).

**PRISONERS, BRITISH, OF WAR** in Germany. See War Office Statement, p. 239.

<sup>1</sup> "Manual of Land Warfare," Sect. 69.

**PRIVATEER.**—An armed private ship commissioned by a belligerent State to carry on operations of war against the enemy. The commission is granted by *letters of marque*.

A privateer is distinguished from a private vessel converted into a ship of war by the belligerent, and manned by proper naval officers, by being fitted out by the owners at their own expense, and remunerated by what they could take from the enemy, after giving the Admiral his share.

The commissioning of privateers had fallen practically into disuse before the war of 1854, when both Great Britain and France gave notice that they would carry on the hostilities at sea by their armed public ships exclusively. At the Congress of Paris a declaration was adopted finally abolishing the practice among the Great Powers there represented.

The only States which had thus far refused to be pledged to this abolition were the United States, Spain, Mexico, Venezuela, and Bolivia. In the war between the United States and Spain, however, both belligerents made known their intention not to employ privateers.

See **DECLARATION OF PARIS**.

See text of Declaration in full, p. 145.

**PRIZE.**—Property captured by a belligerent at sea is known as prize or prize of war.

Enemy ships are lawful prize, except the following, which have been specifically exempted by The Hague Convention (1907) No. XI. from liability to capture, unless they in any way take part in the hostilities:

- (a) Boats solely intended for coastal fishing;
- (b) Boats engaged in petty local navigation;<sup>1</sup>
- (c) Vessels entrusted with—
  - (1) Religious missions;
  - (2) Philanthropic purposes; or
  - (3) Scientific objects.

<sup>1</sup> To these ought to be added *Lighthouse Vessels or Tenders*, which no naval commander in his senses would interfere with.

**PRIZE—continued**

To these may be added :

(d) Hospital ships under The Hague Convention (1907), No. X., Arts. 1, 2, and 3.

(e) Merchant vessels protected by a delay of grace by operation of Hague Convention (1907) No. VI., Art. 1, through happening at the beginning of hostilities to be in an enemy port, and subject to being provided with a *laissez-passer* to reach direct their port of destination or any other port assigned to them.

(f) Merchant vessels which, owing to *vis major*, have been prevented from leaving the enemy port within the above-mentioned delay of grace (Hague Convention [1907] No. VI., Art. 2).

(g) Merchant vessels which may not have been allowed to leave the enemy port.

N.B.—In cases (f) and (g) the belligerent may keep the vessel in port on condition of returning it on termination of the war, or may commandeer it subject to payment of an indemnity (*ibid.*, Art. 2).

(h) Merchant vessels which had left their last port of call before the beginning of hostilities, and which, when met on the high sea, were unaware of their existence (*ibid.*, Art. 3).

N.B.—They may nevertheless be seized subject to being restored to their owners on the termination of the war. They may also be requisitioned or destroyed subject to payment of an indemnity, and subject to provision being made for the safety of the persons on board and the security of the ship's papers (*ibid.*, Art. 3).

(i) Vessels which had left their last port of call before the beginning of the war, and have entered an enemy port unaware of the existence of hostilities (*ibid.*, Art. 1).

The above exemptions do not apply to vessels whose build indicates that they are intended to be transformed into war vessels (*ibid.*, Art. 5). This provision would apply to many liners, English as well as German.

**PRIZE—continued**

(h) Cartel ships (*q.v.*).

Enemy cargo is lawful prize, except—

(1) Enemy goods on board vessels above referred to *sub lit. (e)* to (i).

N.B.—They are, however, liable to seizure subject to being restored to their owners without indemnity on termination of the war, or to being requisitioned against payment of an indemnity.

(2) Enemy non-contraband goods on board a neutral vessel (Declaration of Paris [*q.v.*]).

A neutral ship is liable to capture as lawful prize—

(a) If caught carrying contraband of war to the enemy (see **CONTRABAND OF WAR**)—

(1) Either to an enemy port;

(2) Or to a neutral port where the contraband has an ultimate enemy destination. See **CONTINUOUS VOYAGE**.

(b) If caught committing a breach of a blockade of which it has had notice. See **BLOCKADE**.

(c) If caught acting in the enemy's service. See **UN-NEUTRAL SERVICE**.

A British ship trading with or acting in the enemy service, unless the master of such ship was ignorant that war had broken out, is liable to confiscation.

A British vessel may be regarded as trading with the enemy—

(a) If she has commenced her voyage from a hostile port.

(b) If during her voyage she has touched at a hostile port as a port of call, whether she has actually taken cargo on board thence or not.<sup>1</sup>

(c) If she commenced her voyage, having a hostile port, either certainly or according to contingencies, for her port of destination or port of call, unless, previous to the time when she is met with, her master has definitely abandoned the intention to go to a hostile port.

(d) If her real port of destination is hostile, though her immediate and apparent port of destination is neutral.<sup>2</sup>

<sup>1</sup> Joseph, 8 Cranch, 454.

<sup>2</sup> Jonge Pieter, 4 C Rob. 83. See also "Manual of Naval Warfare."

**PRIZE—continued**

Vessels owned by subjects of an ally of Great Britain in any war are acting as illegally as British vessels if they trade with the enemy or act in his service.

To be good prize the capture must take place on the high sea (*q.v.*) or in the water, territorial or other, of the belligerents. A capture in neutral waters, territorial or other, is illegal. See **TERRITORIAL WATERS; NEUTRALITY.**

**PRIZE COURT (INTERNATIONAL).** See **DECLARATION OF LONDON.**

**PRIZE COURTS.**—The order for the *Constitution of Prize Courts* was issued on August 5, 1914. It authorized "His Majesty's High Court of Justice and the Judges thereof to take cognizance of and judicially proceed upon all and all manner of captures, seizures, prizes, and reprisals of all ships, vessels, and goods that are or shall be taken, and to hear and determine the same; and according to the course of Admiralty and the Law of Nations, and the Statutes, Rules, and Regulations for the time being in force in that behalf, to adjudge and condemn all such ships, vessels, and goods as shall belong" to the enemy State, or the citizens or subjects thereof, or to any other persons inhabiting within any of the countries, territories, or dominions of the said State.

PRIZE COURTS are national tribunals instituted to deal with captures of enemy ships and their cargoes, and of neutral ships and their cargoes alleged to have infringed the laws of neutrality. They are Courts invested with power to administer International Law with the impartiality of national justice.



**PRIZE COURTS**—*continued*

Sir William Scott, in the case of the Swedish ship *Maria* (1799, 1 Rob. 349), prefaced his judgment by the following vindication of judicial impartiality in prize cases:

"In forming my judgment," he said, "I trust it has not escaped my anxious recollection for one moment of what it is that the duty of my station calls for from me—namely, to consider myself as stationed here, not to deliver occasional and shifting opinions to serve present purposes of particular national interest, but to administer with indifference that justice which the law of nations holds out without distinction to independent States, some happening to be neutral and some belligerent. The seat of judicial authority is indeed locally here in the belligerent country according to the known law and practice of nations; but the law itself has no locality. It is the duty of the person who sits here to determine this question exactly as he would determine the same question if sitting at Stockholm: to assert no pretensions on the part of Great Britain which he would not allow to Sweden in the same circumstances, and impose no duties on Sweden as a neutral country which he would not admit to belong to Great Britain in a similar character. If, therefore, I mistake the law in this matter, I mistake that which I consider, and which I mean should be considered, as the universal law upon the question—a question regarding one of the most important rights of belligerent nations relatively to neutrals."

British Prize Courts are the High Court of Admiralty of England, and every Court of Admiralty or of Vice-Admiralty, or other Court exercising Admiralty Jurisdiction in British Dominions, for the time being authorized to take cognizance of and judicially proceed in matters of prize. Every such Court, other than the High Court of Admiralty, is comprised in the term "Vice-Admiralty Prize Court."

The High Court of Admiralty of England has jurisdiction throughout the British Dominions as a Prize Court, and as such has power to enforce any order or decree of a Vice-Admiralty Prize Court, and any order or decree of the Judicial Committee of the Privy Council in a prize appeal.

*Initial Procedure.*—Every cause in matters of prize is instituted by a writ of summons<sup>1</sup> to the owners and parties

<sup>1</sup> See **MONITION**.

**PRIZE COURTS**—*continued*

interested in the ship and the goods laden therein, or the owners and parties interested in the goods seized and taken as prize, to within eight days after the service of the writ, inclusive of the day of service, cause appearance to be entered in a cause instituted by the Procurator-General or other the proper officer of the Crown against the said ship and goods for the condemnation thereof as good and lawful prize.

*Evidence and Hearing.*—1. A cause for the condemnation of a ship of war is heard upon the affidavit as to ship papers, and the ship papers, if any, exhibited thereto, either alone or upon such other evidence as the Judge may direct.

2. A cause for the condemnation of a ship other than a ship of war is heard upon the following evidence:

(a) The affidavit as to ship papers, and the ship papers, if any, exhibited thereto;

(b) Upon the affidavits of the officers of the ship concerned in the capture;

(c) The depositions of the witnesses, if any, examined before the hearing, whether such witnesses belong to the captured ship or are tendered on behalf of the captors or of any other party;

(d) The evidence given at the hearing of any witnesses, whether on behalf of the captors or of any other party; and—

(e) Such further evidence, if any, as may be admitted by the Judge (Prize Court Rules, 1914, Order 15).

*Enforcement and Execution of Decrees and Orders.*—Where the Judge condemns property as prize the decree of condemnation may be enforced—

1. If the property is still under arrest, by sale of such property.

2. If the property has been sold before condemnation and the proceeds have not already been paid into Court, by order to the persons holding the same to pay the same into Court.

3. In respect of freight found due for the carriage of goods in a ship condemned as prize, by arrest of the goods

**PRIZE COURTS—continued**

so carried until payment into Court of such freight or by order against the owner of the goods, or other persons holding, or responsible for, such freight, to pay the same into Court.

4. So far as a decree deals with costs and expenses (other than costs and expenses ordered to be paid out of proceeds), by order against the parties ordered to pay the same or their bail.

5. If the property has been released on bail before condemnation, by order against the bail (*ibid.*, Order 27).

*Appeal.*—Appeal lies to His Majesty in Council from any order or decree of a Prize Court, as of right in case of a final decree, and in other cases with the leave of the Court making the order or decree.

Every appeal is made in such manner and form and subject to such regulations as may for the time being be directed by Order in Council.

Prize Court Rules were issued under an Order in Council, dated August 7, 1914, subject to the provisions of the Rules Publication Act, 1893, which require that till forty days shall have elapsed they shall be regarded as provisional.<sup>1</sup>

<sup>1</sup> The Act for the Publication of Statutory Rules (December 21, 1893) provides as follows:

"I. (1) At least forty days before making any statutory Rules to which this section applies, notice of the proposal to make the Rules, and of the place where copies of the draft Rules may be obtained, shall be published in the *London Gazette*.

"(2) During those forty days any public body may obtain copies of such draft Rules on payment of not exceeding threepence per folio, and any representations or suggestions made in writing by a public body interested to the authority proposing to make the Rules shall be taken into consideration by that authority before finally settling the Rules; and on expiration of those forty days, the Rules may be made by the rule-making authority either as originally drawn or as amended by such authority, and shall come into operation forthwith, or at such time as may be prescribed in the Rules."

The Privy Council Office notice on the subject, dated August 7, 1914, states that—

"Notice is hereby given that, after the expiration of forty days from the date hereof, it is proposed to submit to His Majesty in Council the draft of an Order in Council approving new Rules of Court for regulating Prize Proceedings.

**PRIZE COURTS**—*continued*

The Rules in question provide that an appeal shall only be admitted, or leave to appeal granted, by the Prize Court—

(a) Upon the appellant, within a period to be fixed by the Court, entering into sufficient security to the satisfaction of the Court, if so required, for the due prosecution of the appeal and the payment of all such costs as may become payable to the respondent in the event of the appeal being dismissed for non-prosecution or of His Majesty in Council ordering the appellant to pay the respondent's costs of the appeal; and

(b) Upon such conditions, if any, as to the time or times within which the appellant shall take the necessary steps for the purpose of procuring the preparation of the record and the despatch thereof to the Privy Council as the Court, having regard to all the circumstances of the case, may think it reasonable to impose (Art. 3).

The appeal proceeds in accordance with the Rules for the time being regulating the general practice and procedure in appeals to His Majesty in Council, so far as such Rules may be applicable—that is to say, at present in accordance with the Judicial Committee Rules of 1908.

**PRIZE COURTS PROCEDURE** is regulated by Orders of His Majesty in Council. In pursuance of the Naval Prize Act, 1864, it may be from time to time framed by the Judicial Committee of the Privy Council to come into effect after approval by His Majesty in Council. The Prize Court Rules at present operative are those “prescribed to be observed” by Order in Council, dated August 5, 1914. See **PRIZE COURTS**.

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“By Order in Council of August 6, 1914, the said Rules were approved as *provisional* Rules under Sect. 2 of the Rules Publication Act, 1893.

“Notice is hereby further given that, in accordance with the provisions of the last-named Act, copies of the proposed Rules can be obtained by any public body, within forty days of the date of this notice, at the Privy Council Office, Whitehall.”

**PRIZE MONEY.**—Sect. 55 of the Naval Prize Act, 1864, provides that nothing in it shall give officers and crew of any British ships of war any right or claim in or to any ship or goods taken as prize or the proceeds thereof, "it being the intent of the Act that such officers and crews shall continue to take only such interest (if any) in the proceeds of prizes as may be from time to time granted to them by the Crown."

In other words, *prize money* is a matter of bounty and not one of right. In 1913 a Departmental Committee was appointed to revise Prize Court procedure, and the Prize Court Rules<sup>1</sup> which have been issued are a consequence of the Committee's recommendations. In the official speech introducing the Prize Court Bill (now Prize Court [Procedure] Act, 1914)<sup>2</sup> it was stated that a recommendation to abolish prize money had been adopted by the Government, but that some form of bounty would nevertheless be granted; and now by an Order in Council, dated August 28, 1914, "a memorandum submitted by the Admiralty, dated August 26, proposing to substitute in lieu of the system of distribution of prize money a system of prize bounties, or gratuities," has been adopted, and the Admiralty authorized accordingly.

**PRIZE SALVAGE** is where any ship or goods belonging to any of His Majesty's subjects, after being taken as prize by the enemy, is or are retaken from the enemy by any of His Majesty's ships of war. See Naval Prize Act, 1864, Sect. 40.

**PUBLIC BUILDINGS DURING BOMBARDMENT.**—Although the bombardment of the private and public buildings of a

<sup>1</sup> See **PRIZE COURT**.

<sup>2</sup> See p. 238.

**PUBLIC BUILDINGS DURING BOMBARDMENT**—*continued*

defended town or fortress is lawful, all necessary steps must be taken to spare, as far as possible, buildings dedicated to public worship, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected.<sup>1</sup>

The besieged are instructed by The Hague Regulations<sup>2</sup> to indicate such buildings or places by distinctive and visible signs, which are to be notified to the enemy beforehand; but this can be no protection in the case of bombardment by land artillery or by aircraft at night.

**QUARTER.**—To declare that no quarter shall be given is forbidden (Regs., Art. 23).

**RAILWAYS.**—The belligerent invader has a general right, under the existing practice, of seizure of whatever he in his discretion may consider necessary for the purpose of breaking the power of the enemy. Railways are, for obvious reasons, extremely useful to belligerents, and in many cases have determined the course of hostilities. The invading commander is therefore entitled to take possession of the rolling-stock, stations, and the whole of the railway administration, without distinction as to whether the railways belong to the invaded State or to private companies. Where the railways belong to the State, the owner is displaced by the invading State. When they belong to private companies, the general rules of warfare, applicable to private property within the invaded State, are followed. That is to say, that the right to take does not imply the right to take without payment.

Regs., Art. 27.

<sup>1</sup> Art. 27.

**RAILWAYS**—*continued*

In fact, under the existing usage the invading belligerent has the right to make use of the railways belonging to private companies, and private companies have the right to receive back the property undiminished or with indemnity for what may be wanting.

In the war of 1870-71 the German army took possession of the Eastern, Northern, Orleans, and Paris-Lyons-Mediterranean Railways, and during their occupation the German authorities received the proceeds of the traffic. After the conclusion of peace, a mixed Commission was appointed to settle the sum to be returned to the companies, which also re-entered into possession of their rolling and other stock.

In the case of the South African Railway, which was seized by the British authorities during the Boer War, the British authorities, instead of returning its property to the company, appropriated it, and dealt with groups of shareholders independently. Their object apparently was to avoid having to include in any arrangement the shares which belonged to the Transvaal Government at the outbreak of the war.<sup>1</sup> The result of not complying with the established usage, however, was great confusion, and has moreover, shaken confidence in the principle of exemption from confiscation of private property on land, which is one of the greatest achievements of International Law in connection with the usages of war.

Art. 53<sup>2</sup> of The Hague War Regulations (1907) is intended to be a reproduction of the existing usage—*i.e.*, of the rule that private property on land is liable to seizure, but not to confiscation, though the wording of the second paragraph lacks precision.

As regards railway property belonging to Neutral States, see **NEUTRALITY**, p. 84.

<sup>1</sup> See for full discussion of this case in the author's "Problems of International Practice and Diplomacy," p. 47. See also an article by him on this subject in the *Law Quarterly Review* of July, 1905, and a reply by Professor Westlake in that of October, 1905.

<sup>2</sup> See p. 158.

**RANSOM** is repurchase by the original owner of the subject-matter of a prize capture.

Under the Naval Prize Act, 1864 (Sect. 45)—

“ His Majesty in Council may from time to time, in relation to any war, make such orders as may seem expedient, according to circumstances, for prohibiting or allowing, wholly or in certain cases, or subject to any conditions or regulations or otherwise, as may from time to time seem meet, the ransoming or the entering into any contract or agreement for the ransoming of any ship or goods belonging to any of His Majesty's subjects, and taken as prize by any of His Majesty's enemies.”

Any agreement entered into, and any bill, bond, or other security given for ransom of any ship or goods, is under the exclusive jurisdiction of the Prize Court (subject to appeal to the Judicial Committee of the Privy Council), and if entered into or given in contravention of any such Order in Council is deemed to have been entered into or given for an illegal consideration.

If any person ransoms or enters into any agreement for ransoming any ship or goods, in contravention of any such Order in Council, for every such offence he is liable to be proceeded against, and on conviction to be fined, in the discretion of the Court, any sum not exceeding £500.

Ransom in warfare on land has disappeared from practice, but the allegation has been made that the German commander agreed to spare the Hotel de Ville of Louvain in consideration of a payment. If this is accurate, it would be a ransom, and not a requisition or contribution.

**RECAPTURE.**—It may happen that an enemy vessel, which has been captured by a British cruiser, is afterwards lost to an enemy's cruiser, and finally recaptured by another British cruiser. The commander effecting such a recapture should send the vessel in for adjudication. Under the old practice the original captors were not entitled to restitution, but both vessel and cargo were condemned as lawful prize



**RECAPTURE**—*continued*

to the recaptors.<sup>1</sup> Prize money (*q.v.*) has since been abolished, but bounty will probably be granted in accordance with the same principle.

If a commander recapture from the enemy an allied vessel, unless the matter is regulated by treaty, he sends her into a British port for adjudication, and the Prize Court, says the "Official Manual," will award salvage<sup>2</sup> or not, according as the Prize Court of the ally would or would not have awarded salvage to an allied ship for recapturing a British vessel.

If a commander recapture from the enemy a neutral vessel, which would not have been liable to condemnation in the Prize Court of the enemy, he is not entitled to salvage (*q.v.*), and should, without delay and without taking ransom, set her free to prosecute her voyage.<sup>3</sup>

**REGISTRY, CERTIFICATE OF.** See **SHIP PAPERS.**

**REPATRIATION.**—On the conclusion of peace captivity comes *ipso facto* to an end, though prisoners of war remain under military discipline until repatriation. The repatriation must be carried out as promptly as possible, subject to the requirements of keeping order and obtaining the necessary transport.

**REPRISALS** are one of the modes by which belligerents obtain redress for violations of the laws of warfare. A humane

<sup>1</sup> See "Naval Prize Manual."

<sup>2</sup> See **PRIZE SALVAGE.**

<sup>3</sup> See "Naval Prize Manual."

**REPRISALS**—*continued*

commander endeavours to obtain redress by punishing the offenders, and only in the last extremity resorts to collective punishment, and in any case it is mere savagery and vandalism if the reprisals exceed the measure of what is necessary to deter repetition. Nor may a commander in occupation of enemy territory inflict a collective penalty, pecuniary or otherwise, on the population on account of the acts of individuals for which it cannot be regarded as collectively responsible.<sup>1</sup>

Although collective punishment of the population is forbidden for the acts of individuals for which it cannot be regarded as collectively responsible, it may be necessary, says the War Office Manual, to resort to reprisals against a locality or community for some act committed by its inhabitants who cannot be identified.<sup>2</sup>

**REQUISITION BY ADMIRALTY.**—If in a cause for the condemnation of a ship in respect of which no final decree by the Prize Court has been made, it is represented to the Judge on motion on behalf of the Crown that the Lords of the Admiralty desire to requisition the ship, and that there is no reason to believe that it is entitled to be released, he orders that the ship shall be appraised, and that upon payment into Court on behalf of the Crown of the appraised value of the ship it must forthwith be released and delivered to the Lords of the Admiralty, unless he considers there is good reason to believe it to be neutral property.<sup>3</sup>

**REQUISITIONING OF BRITISH SHIPS.**—By a proclamation dated August 3, 1914, the Lords Commissioners of the

<sup>1</sup> Regs., Art. 50.

<sup>2</sup> "Manual of Land Warfare," Sect. 458.

<sup>3</sup> Prize Court Rules, Order 29.

**REQUISITIONING OF BRITISH SHIPS—continued**

Admiralty were authorized to requisition any British ship within the British Isles, or the waters adjacent thereto, in view of the necessity for the immediate employment of a large number of vessels for use as transports and as auxiliaries for the convenience of the fleet, and for other similar services.

The owners of all ships and vessels so requisitioned were to receive payment for their use, and for services rendered during their employment in the Government service, and compensation for loss or damage thereby occasioned.

By a later notification of August 31, 1914, a Board of Arbitration was constituted and Rules of Procedure set out, to be followed thereby "so far as may be practicable in the circumstances of each case" (see *London Gazette*, September 1, 1914).

**REQUISITIONS OF EMERGENCY** are authorized under Sect. 115 of the Army Act in respect of carriages, including motor-cars and other locomotives, vessels, boats, barges, horses, mules, and any other beast used for burden or draught, or for carrying persons, bicycles, and aircraft of all descriptions. The requisition is made by Royal Order stating that a case of emergency exists empowering any General or Field Officer in command of the regular forces in any military district to require the Justices of the Peace to issue warrants accordingly.

Such an order was issued under date August 4, 1914, covering "carriages, animals, vessels, and aircraft."

**RESISTANCE TO SEARCH.** See **SEARCH.**

**RULE OF THE WAR OF 1756.**—Under this Rule it was held that neutral vessels were liable to detention for engaging in a trade which in time of peace was closed to vessels other than those of the enemy State. The colonial and coasting trades were at the time closed to foreign vessels.

At the present day the Rule only has the importance of the general principle it implies that neutrals shall not be allowed to take advantage of a war to try to carry on a trade from which they are excluded in time of peace, such, for instance, as a coasting trade reserved exclusively to nationals. Thus in 1793 the French opened their coasting and colonial trade, until then forbidden, to neutrals. England applied the Rule, and captured neutral vessels engaging in it on the ground, as Lord Stowell explained, that a belligerent would not have relaxed the prohibition unless he had been unable to carry on the trade himself, that, consequently, the neutral ship was assisting the enemy, and thereby forfeited its neutral rights. Art. 57 of the Declaration of London excludes the case in question from operation of the general rule that the character of a vessel is determined by the flag she is entitled to fly (see p. 209).

Higgins, "War and the Private Citizen" (London, 1912), on this subject should be consulted.

**USES OF WAR** and the employment of methods necessary to obtain information about the enemy and the country are considered allowable (Regs., Art. 24).

Even the flying of the enemy or a neutral flag is allowable; but in that case the true colours must be shown before opening fire, even though only a moment before. "For to sail and chase under false colours may be an allowable stratagem of war, but firing under false colours is what the law of this country does not permit."<sup>1</sup>

See **SHAMMING DEATH**.

<sup>1</sup> See J. A. Hall, "Laws of Naval Warfare." London, 1914.

**SAFE-CONDUCTS.**—A safe-conduct is a document given by a commander of belligerent forces to enemy subjects or others authorizing them, during a limited or unlimited period, to go into places which they could not reach without coming into collision with armed forces actively operating against the enemy—for instance, to visit or leave a besieged town.

A safe-conduct may also be given for goods, and it comprises then the permission for such goods to be carried unmolested from or to a certain place—for instance, from or into a besieged town.<sup>1</sup>

**SAFEGUARD.**—A safeguard is a party of soldiers detailed by a commanding officer for the purpose of protecting churches, monuments, or other public buildings against spoliation in the heat of war. Safeguards must be treated by the enemy as inviolable, and must be sent back to their army as soon as feasible, even when posted without arrangement between the belligerents. The term is also used where a commander leaves a written order with an enemy person requesting a succeeding commander to grant protection to him or the building in question.

**SALVAGE.** See **PRIZE SALVAGE.**

**SCIENTIFIC EXPEDITIONS.** See **PRIZE.**

<sup>1</sup> See "Manual of Land Warfare," Sects. 328, 329.

**SEA-BRIEF.** See **SHIP PAPERS.**

**SEARCH**, or, as most writers inaccurately call it, *Visit*<sup>1</sup> and *Search*, is the proceeding by which a belligerent naval commander ascertains, if need be, the character of any merchant vessel he encounters on the high sea, and that of the cargo and passengers on board.

The mere flying of a flag is no criterion in itself of the character of a vessel. But for the belligerent right of search an enemy vessel might escape by flying a neutral flag, or a neutral ship might with impunity carry contraband for the enemy's benefit.

All neutral private vessels, whether merchantmen or not, are liable to search, but not neutral warships.

The right of search is confined to the high sea, which does not include territorial waters (*q.v.*).

The procedure of search as exercised in the British Navy is set out in the "Naval Prize Manual" as follows:

If after an examination of the vessel's papers, the visiting officer is not satisfied that she is not liable to detention, he should proceed to search her.

When the search has been authorized, the boat's crew should be called on board to assist, and, if required, further assistance should be obtained from the ship.

During the search neither the master nor any other person should be removed from the vessel without his own consent.

Care should be taken to prevent any avoidable damage to the ship or cargo.

If in the course of the search the visiting officer is satisfied that the vessel is not liable to detention, the search should be immediately discontinued; everything that has been removed should be replaced as quickly and carefully as possible, and the vessel allowed to pursue her course without delay.

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<sup>1</sup> The word is derived from the French word *visite*, the English equivalent of which is *search*.

**SEARCH**—*continued*

Before quitting the vessel the visiting officer should ask the master whether he has any complaint to make of the manner in which the search has been conducted, or on any other ground. If the master makes any complaint, the visiting officer should request him to specify the particulars in writing.

The visiting officer should enter on the log-book of the vessel a memorandum of the search. The memorandum should specify the date and place of the search, and the name of His Majesty's ship, and of the commander, and the visiting officer should sign the memorandum, adding his rank in the Navy.

Immediately on his return to his ship the visiting officer would draw up a statement of his proceedings, specifying whether any complaint was made by the master or any other person on board the vessel, and, if so, what the complaint was. He should also deliver to the commander any complaint which the master may have made in writing, and the commander should thereupon carefully investigate the case, and deal with it according to circumstances.

The officer who accompanied the visiting officer should also draw up and deliver to the commander a statement of all the facts which he witnessed.

The commander should see that a proper entry of all the necessary particulars is made in the boarding-book and also in the log-book of his ship. Both the boarding-book and the log-book should be signed by the officers by whom the search was made.

The commander should, by the first opportunity, forward a full report of the case, together with his own remarks thereon, to the senior officer on the station, and a duplicate thereof to the Secretary of the Admiralty.

Forcible resistance to the legitimate exercise of the right of search involves capture and liability to condemnation of the vessel. The cargo is liable to the same treatment as the cargo of an enemy vessel. Goods belonging to the master or owner of the vessel are treated as enemy goods.<sup>1</sup>

<sup>1</sup> Declaration of London, 1909, Art. 63.

**SHAMMING DEATH**—It is treachery for a soldier to sham that he was wounded or dead, or to pretend that he had surrendered, and afterwards to open fire when the enemy came up to him.<sup>1</sup>

See **RUSES OF WAR**.

**SHIP** for naval purposes "includes any description of ship, vessel, boat, or other craft, whatever may be its nautical designation."

**SHIP PAPERS, EXPLANATION OF**.—Every merchant vessel, states the "Naval Prize Manual," should carry on board some official voucher for her nationality, issued by the authorities of the country to which she belongs. The official voucher of a vessel which belongs to a country possessing a register of its Mercantile Marine is a certificate of her registry. In other cases its form varies, and it passes under different names—"passport," "sea-brief," etc.

This official voucher is in all cases conclusive evidence of the nationality of the vessel as against the master, but not in his favour. If, therefore, it turns out that the real nationality of the vessel is different from that indicated by the official voucher, the master is debarred from claiming the benefit of such real nationality, and is also compelled to submit to the disadvantageous consequences of it, if any.

The absence of an official voucher is a grave cause of suspicion, and if unaccounted for justifies the detention of the vessel.

*The Certificate of Registry* is the document signed by the Registrar of the port to which the vessel belongs, and usually

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<sup>1</sup> Regs., Art. 23. See also "Manual of Land Warfare," Sect. 46.



**SHIP PAPERS, EXPLANATION OF—continued**

specifies (*inter alia*) the name of the vessel and of the port to which she belongs, her tonnage, etc., the name of her master, particulars as to her origin, the names and descriptions of her registered owners.

*The Passport* purports to a requisition on the part of a Sovereign Power or State to suffer the vessel to pass freely with her company, passengers, goods, and merchandise, without any hindrance, seizure, or molestation, as being owned by citizens or subjects of such State. It usually contains the name and residence of the master, the names, description, and destination of the vessel.

*The Sea-Letter or Sea-Brief* is issued by the civil authorities of the port from which the vessel is fitted out. It is a document entitling the master to sail under the flag and pass of the nation to which he belongs. It also specifies the nature and quantity of the cargo, its ownership, and destination.<sup>1</sup>

*The Charter-Party* is the written contract by which a vessel is let, in whole or in part, the person hiring being called the charterer. It is executed by the owner or master and by the charterer. It usually specifies (amongst other things) the name of the master, the name and description of the vessel, the port where she was lying at the time of the charter, the name and residence of the charterer, the character of the cargo to be put on board, the port of loading, the port of delivery, and the freight which is to be paid. The charter-party is almost invariably on board a vessel which has been chartered.

*The Official Log-Book* is the log-book which the master is compelled to keep in the form prescribed by the Municipal Law of the country to which the vessel belongs.

*The Ship's Log* is the log kept by the master for the information of the owners of the vessel.

*The Builder's Contract* is to be expected on board a vessel which has not changed hands since she was built. It is not a necessary document, but it sometimes serves in the absence of the pass, or sea-letter or certificate of registry, to verify the nationality of a vessel.

*The Bill of Sale* is the instrument by which a vessel is transferred to a purchaser. It should be required wherever a sale of the vessel is alleged to have been made during the war or just previously to its commencement, and there is any reason to suspect that the vessel is liable to detention either as an enemy vessel or as a British or allied vessel trading with the enemy.<sup>2</sup>

*Bills of Lading* usually accompany each lot of goods. A bill of lading on board a vessel is a duplicate of the document given

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<sup>1</sup> Also called *Permit for Navigation*.

<sup>2</sup> Also called *The Assignment*.

**SHIP PAPERS, EXPLANATION OF—continued**

by the master to the shipper of goods on occasion of the shipment. It specifies the name of the shipper, the date and place of the shipment, the name and destination of the vessel, the description, quantity, and destination of the goods, and freight which is to be paid.

*The Invoices* should always accompany the cargo. They contain the particulars and prices of each parcel of goods, with the amount of the freight duties and other charges thereon, and specify the name and address of the shippers and consignees.

*The Manifest* is a list of the vessel's cargo containing the mark and number of each separate package, the names of the shippers and consignees, a specification of the quantity of the goods contained in each package, as rum, sugar, etc., and also an account of the freight, corresponding with the bills of lading. The manifest is usually signed by the ship-broker who clears the vessel out at the Custom House, and by the master.<sup>1</sup>

*The Clearance* is the certificate of the Custom House authorities of the last port from which the vessel came, to show that the Custom duties have been paid. The clearance specifies the cargo and its destination.

*The Muster Roll* contains the name, age, quality, place of residence, and place of birth of every person of the vessel's company.

*Shipping Articles* are the agreement for the hiring of seamen. They should be signed by every seaman on board, and should describe accurately the voyage and the terms for which each seaman ships.

*Bill of Health* is a certificate that the vessel comes from a place where contagious distemper prevails, and that none of her crew at the time of her departure were infected with such distemper.

**SHIP PAPERS, VARIETIES OF.**—The ship papers on board a vessel vary according to her nationality. The following lists, according to the "Naval Prize Manual," specify what ship papers may usually be expected on board vessels belonging to the principal Maritime States:

*Great Britain.*—Certificate of registry; provisional certificate, granted by a Consul resident in a foreign country

<sup>1</sup> Also called *Freight List*.

**SHIP PAPERS, VARIETIES OF**—*continued*

for a vessel bought there; agreement and account of crew; official log-book; ship's log-book; manifest of cargo; bill of lading; charter-party, if vessel is chartered.

*France*.—Certificate of nationality (*Acte de Francisation*), with particulars from the *Acte de Propriété* endorsed on it, or provisional certificate of nationality (*Acte de Francisation provisoire*); sailing licence; list of the crew; inventory of ship's furniture, fittings, and stores; log-book; manifest of cargo; bills of lading; charter-party, if vessel is chartered; *acquits à caution* are only required of French vessels arriving at one French port from another French port.

*Belgium*.—Sea-letter (*Lettre de Mer*) available for four years; list of the crew (*Rôle d'Equipage*); certificate of registry (*Certificat du Registre de Jaugeage*); log-book; manifest of cargo; bills of lading; charter-party, if vessel is chartered; *Acte de propriété*.

*Germany*.—Certificate of nationality; provisional certificate of nationality (*Flaggen-Attest*); certificate of measurement for decked steamers (*Schiff's Messbrief*); certificate of measurement for decked sailing vessel; provisional certificate of measurement for steamers and sailing vessels; list of the crew (*Musterrolle*); log-book; manifest of cargo; bills of lading; charter-party, if vessel is chartered.

*Austria*.—Certificate of registry, or provisional certificate of registry; muster roll; official log-book; ship's log-book; manifest of cargo; bills of lading; charter-party, if vessel is chartered.

*Hungary*.—Certificate of registry; muster roll; official log-book; ship's log-book; manifest of cargo; bills of lading; charter-party, if vessel is chartered.

*Japan* (the same as Great Britain).

**SHIPPING ARTICLES.** See **SHIP PAPERS.**

**SHIPS OF WAR AND PRIZE LAW.**—Sect. 16 of the Naval Prize Acts of 1864 does not apply to ships of war taken as prize (see Sect. 1 of Act to amend the law relating to procedure in Prize Courts).

**SINKING OF NEUTRAL PRIZES.** See **DESTRUCTION OF NEUTRAL PRIZES.**

**SPIES.**—A person can only be considered a spy if, acting clandestinely, or on false pretences, he obtains, or seeks to obtain, information in the zone of operations of a belligerent, with the intention of communicating it to the enemy.

Thus, soldiers who have penetrated undisguised into the zone of operations of a hostile army to obtain information are not considered spies. Similarly, the following are not considered spies: soldiers or civilians carrying out their mission openly, charged with the delivery of despatches destined either for their own army or for that of the enemy. To this class belong likewise individuals sent in balloons to deliver despatches, and generally to maintain communication between the various parts of an army or a territory (Regs., Art. 29).

A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, is entitled to treatment as a prisoner of war in spite of his previous acts of espionage (Art. 31).

A spy even taken in the act cannot be punished without previous trial (Art. 30).

In the British Navy the treatment of spies is governed by the *Naval Discipline Act*, 1866, amended by the *Naval Discipline Act*, 1909.

**SUBMARINE CABLES** connecting enemy with neutral territory in case of occupation (*q.v.*) by enemy may be seized, and in case of urgent necessity destroyed.<sup>1</sup>

The International Convention of 1884, relating to submarine cables, expressly stipulates that it in no way interferes with the freedom of action of belligerents.

**SURRENDER.**—As capitulation means the act of surrendering to an enemy upon stipulated terms, individual soldiers or parties of soldiers who throw down their arms and surrender do not capitulate, but surrender purely and simply. Yet it may occur that small detached parties, or even individual soldiers, to surrender upon stipulated terms; in such a situation they are necessarily left to their own discretion, and the senior of the party or the individual, so far as concerns the party or his own person, may do everything which a commander might do with respect to himself and the troops under his command.<sup>2</sup>

**SWITZERLAND, NEUTRALITY OF.**—Switzerland owes her neutrality to a Declaration dated March 20, 1815, signed by eight Powers—viz., Great Britain, France, Russia, Prussia, Austria, Spain, Portugal, and Sweden and Norway—which guaranteed her perpetual neutralization. By a decision of the Swiss Confederation, dated May 27, 1815, this neutralization was accepted, and on November 20, 1815, it was re-affirmed by a new Declaration on the part of Great Britain, France, Russia, Prussia, and Austria.

<sup>1</sup> Regs., Art. 54.

<sup>2</sup> "Manual of Land Warfare," Sect. 311.

**TERRITORIAL WATERS** are the margin or belt of sea adjacent to the land of any State.<sup>1</sup>

"The territorial waters of Her Majesty's dominions," says the Territorial Waters Jurisdiction Act, 1878, "in reference to the sea, means such part of the sea adjacent to the coast of the United Kingdom, or the coast of some other part of Her Majesty's dominions, as is deemed by International Law to be within the territorial sovereignty of Her Majesty; and for the purpose of any offence declared by this Act to be within the jurisdiction of the Admiral, any part of the sea within one marine league of the coast measured from low-water mark shall be deemed to be open sea within the territorial waters of Her Majesty's dominions."

In further amplification of this definition, "territorial waters," say the King's Regulations and Admiralty Instructions of 1913, include ports, harbours, bays, mouths of rivers, and adjacent parts of the sea enclosed by headlands belonging to the same State, besides the waters to the distance of a marine league from the shore all along the coast of the same State.

In connection with war, the provisions of The Hague Convention (1907) No. XIII. assimilate territorial waters to the land they adjoin, saving the right of innocent passage.

There has, as yet, been no general agreement as to the width of the margin. Spain claims jurisdiction seawards to the distance of six miles, Norway and Sweden to the distance of four miles, and Germany vaguely a distance equal to cannon range. The subject is still in a state of uncertainty, but in practice the rule as set out above in the King's Regulations is generally observed. The drawing of an imaginary line across bays between the two points seawards at which the distance is ten miles, and measuring

<sup>1</sup> See a full account of the questions connected with territorial waters by the present writer in the volume for 1912 of the Proceedings of the International Law Association, and his contributions in different *Annuaire*s of the Institute of International Law as convener of the Standing Committee on the subject.

**TERRITORIAL WATERS**—*continued*

the territorial margin from this imaginary line, is also in general recognized in practice.<sup>1</sup>

The exemption of territorial waters from acts of warfare is absolute. The rule *dum fervet opus* therefore does not apply, and a belligerent warship pursuing an enemy merchant ship into neutral waters is doing an illegal act. Nevertheless the capture of a merchant ship in neutral territorial waters is not invalid as between captor and prize. When violation of the territory of a neutral State takes place, that State alone whose tranquillity has been disturbed possesses the right of demanding reparation for the injury which it has sustained. The neutral State, therefore, makes application to the Prize Court usually through its Consul, duly authorized, or through its diplomatic representative.

**TRADING WITH THE ENEMY.**—It is contrary to law for any person resident, carrying on business, or being in the British Dominions, to trade or have any commercial intercourse with any person resident, carrying on business, or being in any enemy countries except by Royal licence.

By a Proclamation issued on August 5, 1914, with special reference to Germany, all persons resident, carrying on business, or being in British Dominions, were therefore warned not to supply to or obtain from the said Empire any *goods, wares, or merchandise*, or to supply to or obtain the same from any person resident, carrying on business, or being therein, nor to supply to or obtain from any person any goods, wares, or merchandise for or by way of transmission to or from the said Empire, or to or from any person resident, carrying on business, or being therein, nor to trade in or carry any goods, wares, or merchandise destined for

<sup>1</sup> This was the mode of measuring the margin across bays under the North Sea Fisheries Convention of May 15, 1884, Art. 2. See Barclay, "Problems," etc., pp. 109 *et seq.*, and 292.

**TRADING WITH THE ENEMY—continued**

or coming from the said Empire, or for or from any person resident, carrying on business, or being therein;

Nor to permit any *British ship* to leave for, enter, or communicate with any port or place of the said Empire;

Nor to make or enter into any new marine, life, fire, or other *policy or contract of insurance* with or for the benefit of any person resident, carrying on business, or being in the said Empire, nor under any existing policy or contract of insurance to make any payment to or for the benefit of any such person in respect of any loss due to the belligerent action of His Majesty's forces or of those of any ally of His Majesty;

Nor to enter into any new commercial, financial, or other contract or obligation with or *for the benefit of any person* resident, carrying on business, or being in the said Empire.

The Order further warned all persons that whoever in contravention of the law shall commit, aid, or abet any of the aforesaid acts will be liable to such penalties as the law provides.

Nevertheless any transactions to, with, or for the benefit of any person resident, carrying on business, or being in the said Empire which are not treasonable and are not for the time being expressly prohibited by virtue of the Proclamation or otherwise, and which but for the existence of the state of war aforesaid would be lawful, are permitted.

The expression "person" in the Proclamation includes any body of persons corporate or unincorporate, and where any person has, or has an interest in, houses or branches of business in some other country as well as in the British Dominions, or in the said Empire (as the case may be), the Proclamation does not apply to the trading or commercial intercourse carried on by such persons solely from or by such houses or branches of business in such other country.

On August 22, 1914, the Treasury published the following explanation of the meaning to be given to this Proclamation:

1. For the purpose of deciding what transactions with foreign traders are permitted, the important thing is to consider



**TRADING WITH THE ENEMY—continued**

where the foreign trader resides and carries on business, and not the nationality of the foreign trader.

2. Consequently, there is as a rule no objection to British firms trading with German and Austrian firms established in neutral or British territory. What is prohibited is trade with any firms established in hostile territory.
3. If a firm with headquarters in hostile territory has a branch in neutral or British territory, trade with the branch is, apart from prohibitions in special cases, permissible, as long as the trade is *bona fide* with the branch and no transaction with the head office is involved.
4. Commercial contracts entered into before war broke out with firms established in hostile territory cannot be performed during the war, and payments under them ought not to be made to such firms during the war. Where, however, nothing remains to be done save to pay for goods already delivered or for services already rendered, there is no objection to making the payment. Whether contracts entered into before war are suspended or terminated is a question of law which may depend on circumstances, and in cases of doubt British firms must consult their own legal advisers.

Nor may British subjects or persons resident or being in British Dominions during the continuance of the war "contribute to or participate in or assist in the floating of any loan raised on behalf of the enemy State, or advance money to or enter into any contract or dealings whatsoever" with the said State, these being treasonable acts for which the offenders are liable to be apprehended and dealt with as traitors.<sup>1</sup>

See **CONTRACTS WITH ENEMY SUBJECTS.**

**TRAITOR,** See **DESERTERS.**

**TRANSFER TO A NEUTRAL FLAG.**—An enemy ship is liable to capture, a neutral ship is not. Hence the question of the conditions in which a belligerent is entitled to disregard the transfer. The subject was dealt with at the London Conference of 1908-09, and Arts. 55 and 56 of the De-

<sup>1</sup> Proclamation dated August 5, 1914.

**TRANSFER TO A NEUTRAL FLAG—continued**

claration of London determine the respective rights of belligerent and neutral where such a transfer has been effected.

Under these articles a transfer of an enemy vessel to a neutral flag, effected before the outbreak of hostilities, is valid, unless it is proved that such transfer was made in order to evade the consequences to which an enemy vessel, as such, is exposed. There is, however, a presumption, if the bill of sale is not on board a vessel which has lost her belligerent nationality less than sixty days before the outbreak of hostilities, that the transfer is void. This presumption may be rebutted.

Where the transfer was effected more than thirty days before the outbreak of hostilities, there is an absolute presumption that it is valid, if it is unconditional, complete, and in conformity with the laws of the countries concerned, and if its effect is such that neither the control of, nor the profits arising from the employment of, the vessel remain in the same hands as before the transfer. If, however, the vessel lost her belligerent nationality less than sixty days before the outbreak of hostilities, and if the bill of sale is not on board, the capture of the vessel gives no right to damages (Art. 55).

It is, therefore, of the greatest importance that the documents, or authenticated copies, establishing a *bona fide* transfer be kept on board.

The transfer of an enemy vessel to a neutral flag, effected after the outbreak of hostilities, is void unless it is proved that such transfer was not made in order to evade the consequences to which an enemy vessel, as such, is exposed.

There is, however, an absolute presumption that a transfer is void—

1. If the transfer has been made during a voyage or in a blockaded port;
2. If a right to purchase or recover the vessel is reserved to the vendor;
3. If the requirements of the municipal law governing the right to fly the flag under which the vessel is sailing have not been fulfilled (Art. 56).

**TREACHERY.**—It is expressly forbidden by the Hague Rules to kill or wound by treachery individuals belonging to the hostile nation or army, as, for example, by calling out, "Do not fire, we are friends," and then firing a volley, or shamming disablement or death, and then using arms.<sup>1</sup>

**TREATIES, EFFECT OF WAR ON.**—The views of international jurists as to the effect of war on treaties differ. The view of Professor von Liszt is that, except in respect of treaties or clauses of treaties entered into in view of war, neutrality, or neutralization, war *ipso facto* cancels all treaties between the belligerent States. He makes no attempt at explanation, merely grounding his statement on existing practice.<sup>2</sup>

Professor von Ullmann, of Munich, makes distinctions, arguing that there is no reason for the cancellation of treaties which are without political character, and only form part of the general business relations between the subjects of the two countries.<sup>3</sup>

On the French side, Bonfils takes the same view as Liszt, on the ground that treaties concluded "in view of pacific relations, and the object of which is to consolidate and maintain those pacific relations," among which treaties he includes treaties of commerce, navigation, and tariffs, are necessarily abrogated by the cessation of peace. They have to be revived specifically by treaty at the termination of the war.<sup>4</sup>

Mr. T. E. Holland, K.C., lately Professor of International Law at Oxford, is not emphatic on the subject, remarking merely that in practice treaties "are usually revived in express terms in the treaty of peace."<sup>5</sup>

<sup>1</sup> Regs., Art. 23. Also "Manual of Land Warfare," Sect. 143.

<sup>2</sup> "Völkerrecht," p. 171, ninth edition. Berlin, 1913.

<sup>3</sup> "Völkerrecht," pp. 474, 475, second edition. Tübingen, 1908.

<sup>4</sup> "Manuel de Droit International Public," p. 477. Paris, 1901.

<sup>5</sup> Article on "Treaties" in the eleventh edition of the "Encyclopædia Britannica," 1910-11.

**TREATIES, EFFECT OF WAR ON—continued**

Mr. Oppenheim, Professor of International Law at Cambridge, on the other hand, is very explicit. As regards the doctrine that the outbreak of war *ipso facto* cancels all treaties previously concluded between the belligerents, such treaties only excepted as have been concluded especially for the case of war, the vast majority of modern writers on International Law, he states, have abandoned this standpoint, and the opinion is now pretty general that war by no means annuls every treaty. Unanimity as to what treaties are or are not cancelled by war, however, does not exist. Neither does a uniform practice exist.<sup>1</sup>

The Institute of International Law has adopted a series of rules on the subject<sup>2</sup> which may be eventually adopted in practice. Meanwhile, however, I may point out that the practice is uniformly in favour of regarding all treaties not made in view of war, neutrality, or neutralization, as cancelled by war.

Thus the Franco-German Treaty of Frankfurt of May 10, 1871, sets (Art. 11) out that all treaties had been annulled by the war.

<sup>1</sup> The majority of writers agree, Professor Oppenheim states, on the following points:

1. The outbreak of war cancels all political treaties between the belligerents which have not been concluded for the purpose of setting up a permanent condition of things—for instance, treaties of alliance.

2. On the other hand, it is obvious that such treaties as have been especially concluded for the case of war are not annulled, such as treaties in regard to the neutralization of certain ports of the territories of the belligerents.

3. Such political and other treaties as have been concluded for the purpose of setting up a permanent condition of things are not *ipso facto* annulled by the outbreak of war; but nothing prevents the victorious party from imposing on the other party in the treaty of peace any alterations in, or even the dissolution of, such treaties.

4. Such non-political treaties as do not intend to set up a permanent condition of things—as treaties of commerce, for example—are not *ipso facto* annulled; but the parties may annul them or suspend them, according to discretion.

5. So-called law-making treaties—as the Declaration of Paris, for example—are not cancelled by the outbreak of war. The same is valid in regard to all treaties to which a multitude of States are parties—as the International Postal Union, for example—but the belligerents may suspend them, as far as they themselves are concerned, in case the necessities of war compel them to do so. See "International Law," vol. ii., p. 128 *et seq.* Second edition, 1912.

<sup>2</sup> See *Annuaire*, 1914.

**TREATIES, EFFECT OF WAR ON—*continued***

The Russo-Turkish Treaty of San Stefano (March 3, 1878) does the same, and revives them (Art. 23).

The Treaty of Shimoneseki (April 17, 1895) assumes in the same way that the Chino-Japanese War had put an end to all existing treaties (Art. 6).

The Hispano-American War of 1898 was declared by the Spanish Government from the outset to have annulled all treaties between the two countries, and the Treaty of Portsmouth, September 5, 1905, between Russia and Japan, specifically states that the treaty of commerce between the two countries had been cancelled by the war (Art. 12).

With these instances before us it is hardly possible as yet to regard any theory to the contrary as having obtained a foothold in practice. The utmost that can be said is, as I wrote in 1898, "War naturally puts an end to all treaties which are based on a condition of peace, and as naturally it leaves intact treaties which provide for the case of war between the parties, such as the Declaration of Paris of 1856. As regards treaties of commerce and others relating to the position, rights, and conveniences of private citizens, such as for extradition, companies, patents, posts, and telegraphs, there seems no ground in reason why war should put an end to them, though war cannot but suspend their operation."<sup>1</sup>

**TRIPLE ALLIANCE.**—The alliance of Germany, Austria-Hungary, and Italy. The alliance was originally entered into between Germany and Austria by a treaty signed by Count Andrassy on behalf of Austria-Hungary and Prince Henry VII. of Reuss acting on behalf of the German Empire, dated October 7, 1879. It was concluded, as the preamble states, for the purpose of consolidating European peace as resulting from the stipulations of the Treaty of

<sup>1</sup> Article on "Treaties" in the "Encyclopædia of the Laws of England." London and Edinburgh, 1898.

**TRIPLE ALLIANCE**—*continued*

Berlin, the two parties "solemnly undertaking never to give it any aggressive tendency."

Art. 1 provided that "if either of the two Empires should be attacked by Russia, the H.C.P. was bound to give the other the support of the whole armed force of its Empire." Art. 2, that "if either of the H.C.P. were attacked by any other Power, it was bound not only not to support the aggressor, but at least to observe a benevolent neutrality towards the other H.C.P. If, however, the aggressor was supported by Russia, either by way of active co-operation or by threatening military measures, the obligation of reciprocal assistance of its whole military force as stipulated in Art. 1 would immediately come into operation."

Russia had been notoriously disaffected by the provisions of the Treaty of Berlin of 1878, and it was in view of the fact that Russia, instead of reducing, was increasing her armaments that Prince Bismarck took the precautionary step of forestalling Russia by a treaty of defensive alliance with Austria-Hungary and preventing the isolation of Germany. The Kaiser and Czar had met on September 3, 1879, at Alexandrowo, where the Czar had assured the Kaiser of his peaceful intentions. The treaty, therefore, stated in Art. 3 that "in view of the disposition expressed by the Czar at Alexandrowo, the H.C.P. hoped that Russia's military preparations (*Rüstungen*) would not become a menace to them, and for that reason the treaty would remain secret," but otherwise the Czar was to be confidentially informed of its existence.

The treaty was published in the German official gazette (*Reichsanzeiger*) on February 3, 1888.

Italy joined the alliance by a treaty signed May 20, 1882. Its terms have never been made public, but the French Government was officially informed in connection with the European War of 1914 that in reply to the German Government's intimation of the fact that ultimatums had been presented to France and Russia, and to the question as to what were the intentions of Italy, the Italian Minister for Foreign Affairs had replied as follows:

**TRIPLE ALLIANCE**—*continued*

"The war undertaken by Austria and the consequences which might result had, in the words of the German Ambassador himself, an aggressive object. Both were, therefore, in conflict with the purely defensive character of the Triple Alliance, and in such circumstances Italy would remain neutral."

See **CASUS FOEDERIS**.

**TRUCE.** See **FLAGS OF TRUCE**.

**ULTIMATUM.**—An ultimatum setting out conditions, compliance with which is required within a specified time, is a conditional declaration of war which becomes absolute in case of non-compliance. See **DECLARATION OF WAR**.

**UNIFORMS, USE OF ENEMY'S.** — The employment of a national flag, says the "Manual of Land Warfare," military insignia, and uniform of the enemy for the purpose of ruse, is not forbidden, but the Regulations (Art. 23) prohibit their *improper* use, leaving unsettled, says the "Manual of Land Warfare," what use is a proper one and what is not. Theory and practice are unanimous in forbidding their employment during a combat—that is, the opening of fire whilst in the guise of the enemy. There is not, however, unanimity with regard to the question whether the uniform of the enemy may be worn and his flag displayed for the purpose of effecting approach or retirement.

The German War Manual ("Kriegsbrauch im Landkriege") regards the use of the enemy's uniform and flag as

**UNIFORMS, USE OF ENEMY'S—continued**

forbidden by The Hague Regulations. The French Manual states that actual practice tolerates their use. I regard the text of the Regulations as conclusive against the use of the enemy's uniform. The word *indament*, rendered in the official translation by the word "improper," seems necessary to give the text a meaning. See text of Art., p. 154.

**UNNEUTRAL SERVICE (ASSISTANCE HOSTILE).—**

Under this heading the Declaration of London classes a number of acts which lie outside other denominations. Among them are the illicit transport of belligerent persons and despatches, hitherto dealt with as *analogues of contraband* (q.v.).

"In a general way," says the Declaration of London, a neutral vessel will receive the same treatment as a neutral vessel liable to condemnation for carriage of contraband—

1. If she is on a voyage specially undertaken with a view to the transport of individual passengers who are embodied in the armed forces of the enemy, or with a view to the transmission of intelligence in the interest of the enemy;

2. If, to the knowledge of either the owner, the charterer, or the master, she is transporting a military detachment of the enemy, or one or more persons who, in the course of the voyage, directly assist the operations of the enemy;

In the cases specified under the above heads, goods belonging to the owner of the vessel are likewise liable to condemnation.

The above provisions, however, do not apply if the vessel is encountered at sea while unaware of the outbreak of hostilities, or if the master, after becoming aware of the outbreak of hostilities, has had no opportunity of disembarking the passengers. On the other hand, the vessel is deemed to be aware of the existence of a state of war if she left an enemy port subsequently to the outbreak of hostilities, or a neutral port subsequently to the notification of the outbreak of hostilities to the Power to which such



**UNNEUTRAL SERVICE (ASSISTANCE HOSTILE)**—*continued*  
port belongs, provided such notification was made in reasonable time.<sup>1</sup>

The Declaration also provides that "in a general way" a neutral vessel will receive the same treatment as would be applicable to her if she were an enemy merchant vessel—

1. If she takes a direct part in the hostilities;
2. If she is under the orders or control of an agent placed on board by the enemy Government;
3. If she is in the exclusive employment of the enemy Government;
4. If she is exclusively engaged at the time either in the transport of enemy troops or in the transmission of intelligence in the interest of the enemy.

In the cases covered by these provisions, goods belonging to the owner of the vessel are likewise liable to condemnation.<sup>2</sup>

Lastly, it provides that any individual embodied in the armed forces of the enemy who is found on board a neutral merchant vessel may be made a prisoner of war, even though there be no ground for the capture of the vessel.<sup>3</sup>

"In a general way" means, as the context shows, subject to the other considerations attaching to the acts incriminated. In both the cases selected as instances of unneutral service the provisions of the articles state that the neutral vessel will be condemned as a preliminary stage of the judgment. After condemnation, it will be for the Court to determine what shall be the nature of the penalty.<sup>4</sup>

**VICE-ADMIRALTY COURTS** are Courts of Admiralty instituted in British Colonies and Dependencies, except where, under the Colonial Courts of Admiralty Act, 1890, a Colonial Court of Admiralty may have been created.

<sup>1</sup> Declaration of London, Art. 45.

<sup>2</sup> *Ibid.*, Art. 46.

<sup>3</sup> Declaration of London, Art. 47.

<sup>4</sup> See, upon the distinctions to be borne in mind, the General Report of the Drafting Committee which is to be treated by the Prize Judge as an authoritative statement on the meaning of the Articles of the Declaration of London (*q.v.*).

**VIOLATIONS OF LAW OF WAR.**—The more important of them are the following: Making use of poisoned and otherwise forbidden arms and ammunition; killing of the wounded; refusal of quarter; treacherous request of quarter; maltreatment of dead bodies on the battlefield; ill-treatment of prisoners of war; breaking of parole by prisoners of war; firing on undefended localities; abuse of the flag of truce; firing on the flag of truce; abuse of the Red Cross flag and badge, and other violations of the Geneva Convention; use of civilian clothing by troops to conceal their military character during battle; bombardment of hospitals and other privileged buildings; improper use of privileged buildings for military purposes; poisoning of wells and streams; pillage and purposeless destruction; ill-treatment of inhabitants in occupied territory.

It is important, however, to note, remarks the "Manual of Land Warfare," that members of the armed forces who commit such violations of the recognized rules of warfare as are ordered by their Government or by their commander are not war criminals, and cannot therefore be punished by the enemy. He may punish the officials or commanders responsible for such orders if they fall into his hands.

War crimes expose the offender to death, though a more lenient penalty may be imposed.

See on this subject the variety of offences fully discussed in "Manual of Land Warfare," Sects. 441-451.

**VISIT AND SEARCH.** See **SEARCH.**

**WAR CRIMES** are punishable acts committed by soldiers or civilians. To these belong violations of the recognized rules of warfare by enemy soldiers or the armed hostility of enemy civilians not belonging to the armed forces. See Regs., Art. 23, p. 153.

**WARLIKE STORES, EXPORTATION OF.**—Proclamations have been issued, on August 3, 5, 10, and 20, 1914, forbidding the exportation from the United Kingdom of different stores, provisions and victuals, also Orders in Council of August 28, and September 1, 8, 11, and 25, 1914. See also Customs and Inland Revenue Act, 1879, the Exportation of Arms Act, 1900, and the Customs (Exportation Prohibition) Act, 1914.

**WAR REBELLION,** a term applied to civilian hostilities by inhabitants of an invaded district.

**WASHINGTON RULES.**—These Rules were enunciated in the Treaty of Washington, 1871, in connection with the reference of the Alabama case to arbitration. It was agreed between the parties that a neutral State is under the obligation to exercise "due diligence" where it has "reasonable ground" to believe that any acts have a belligerent character, in "preventing" them. The British Government did not agree to this statement of neutral obligations as between Great Britain and the United States, being regarded as a statement of International Law binding generally. As I pointed out in 1907,<sup>1</sup> a self-governing State, moreover, can only apply the laws it possesses. The Washington Rules, subject to this qualification, which was borrowed from my book, have now been practically embodied in The Hague Convention No. XIII., Art. 8.<sup>2</sup>

**WATERS, TERRITORIAL.** See **TERRITORIAL WATERS.**

<sup>1</sup> "Problems," etc., p. 85.

<sup>2</sup> See p. 174.

**WIRELESS TELEGRAPHY.**—On August 3, 1914, Regulations were made by the Admiralty prohibiting the use of wireless telegraphy by merchant vessels in the harbours and waters of the United Kingdom and Channel Islands.

On entering any port or harbour, or on directions being given to that effect by any naval, military, examination service, Customs or police officer, the aerial wire or antenna is to be at once lowered, disconnected from its halliards and from the operating-room, and is not to be rehoisted while the ship remains in British waters.

Any breach of these Regulations renders the masters of offending ships liable to penalties and to the confiscation of the wireless apparatus of their ships.

They do not, however, apply to ships owned (not chartered) by the Admiralty, whether they fly the Blue or the Red Ensign.

A neutral State must prevent a belligerent from installing on its territory any wireless telegraphy station or any apparatus for the purpose of communicating. A neutral State must also prevent belligerents from using a station or apparatus already established in time of peace on its territory, if such station or apparatus is exclusively for military purposes, and was not previously open to the public.<sup>1</sup>

See **NEUTRALITY**, p. 88.

<sup>1</sup> V., Art. 3.



## **APPENDICES**



## APPENDICES

### I.

#### **Declaration of Paris (1856).**

THE Plenipotentiaries who signed the Treaty of Paris of March 30, 1856, assembled in conference,

Considering:—That maritime law in time of war has long been the subject of deplorable disputes;

That the uncertainty of the law and of the duties in such a matter gives rise to differences of opinion between neutrals and belligerents which may occasion serious difficulties, and even conflicts; that it is consequently advantageous to establish a uniform doctrine on so important a point;

That the Plenipotentiaries assembled in Congress at Paris cannot better respond to the intentions by which their Governments are animated than by seeking to introduce into International relations fixed principles in this respect.

The above-mentioned Plenipotentiaries, being duly authorized, resolved to concert among themselves as to the means of attaining this object; and having come to an agreement, have adopted the following solemn declaration:—

1. Privateering is and remains abolished;
2. The neutral flag covers enemy's goods, with the exception of contraband of war;
3. Neutral goods, with the exception of contraband of war, are not liable to capture under enemy's flag;
4. Blockades, in order to be binding, must be effective—that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.

The Governments of the undersigned Plenipotentiaries engage to bring the present declaration to the knowledge of the States which have not taken part in the Congress of Paris, and to invite them to accede.



Convinced that the maxims which they now proclaim cannot but be received with gratitude by the whole world, the undersigned Plenipotentiaries doubt not that the efforts of their Governments to obtain the general adoption thereof will be crowned with full success.

The present Declaration is not and shall not be binding, except between those Powers who have acceded, or shall accede, to it.

PARIS,  
April 16, 1856.

## II.

### **Hague Convention (No. III.) relating to the Commencement of Hostilities.**

#### *(Names of the High Contracting Parties.)*

Considering that, on the security of peaceful relations, it is important that hostilities should not be commenced without previous notice;

That it is also important that a state of war should be notified to neutral Powers without delay;

Desiring to conclude a Convention for this purpose, have appointed as their Plenipotentiaries:

#### *(Names and Description of the Plenipotentiaries.)*

Who, after having deposited their full powers, found to be in good and due form, have agreed as follows:

ART. 1.—The contracting Powers agree that hostilities shall not commence between them without previous and unequivocal notice, which shall be in the form either of a declaration of war stating its grounds, or of an ultimatum with a conditional declaration of war.

ART. 2.—The state of war shall be notified without delay to the neutral Powers, and shall only take effect with respect to them after receipt of notice, which may even be sent by telegraph. Neutral Powers, however, cannot set up the absence of notification, if it be shown that they unquestionably were cognisant of the state of war.

ART. 3.—Art. 1 of the present Convention shall be operative in case of war between two or more of the contracting Powers.

Art. 2 is obligatory in the relations between a contracting belligerent and neutral Powers also contracting.

ART. 4.—The present Convention shall be ratified<sup>1</sup> as soon as possible, etc.

(Arts. 5, 6, 7, and 8 formal.)

### III.

#### **Hague Convention (No. IV.) with Respect to the Laws and Usage of War on Land (with Differences between the Texts of 1899 and 1907).**

*(The passages between square brackets are the parts of the Convention and Regulations of 1899 which have been suppressed. Those in italics are the additions and alterations made by the Convention of 1907.)*

#### *(Names of High Contracting Parties.)*

Considering that, while seeking means to preserve peace and prevent armed conflicts among nations, it is likewise necessary to have regard to cases where an appeal to arms may be caused by events which their solicitude could not avert;

Animated by the desire to serve, even in this extreme hypothesis, the interests of humanity and the ever-increasing requirements of civilization;

Thinking it important, with this object, to revise the laws and general customs of war, either with the view of defining them more precisely, or of laying down certain limits for the purpose of modifying their severity as far as possible;

[Inspired by these views which are enjoined at the present day, as they were twenty-five years ago at the time of the Brussels Conference in 1874, by a wise and generous foresight;

[Have, in this spirit, adopted a great number of provisions, the object of which is to define and govern the usages of war on land;]

<sup>1</sup> For list of Powers which have ratified the Convention No. III., see p. 60.

*Have thought it necessary to complete and to give precision on certain points to the work of the First Peace Conference, which, following the Brussels Conference of 1874, sought inspiration from views suggested by a wise and generous foresight, and adopted provisions having for their object the definition and regulation of the usages of war on land.*

In the view of the High Contracting Parties, these provisions, the wording of which has been inspired by the desire to diminish the evils of war so far as military necessities permit, are destined to serve as general rules of conduct for belligerents in their relations with each other and with populations;

It has not, however, been possible to agree forthwith on provisions embracing all the circumstances which occur in practice;

On the other hand, it could not be intended by the High Contracting Parties that the cases not provided for should, for want of a written provision, be left to the arbitrary judgment of the military Commanders;

Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience;

They declare that it is in this sense especially that Arts. 1 and 2 of the Regulations adopted must be understood;

The High Contracting Parties, desiring to conclude a Convention to this effect, have appointed as their Plenipotentiaries: . . . . .

Who, after [communication of] *having deposited* their full powers, found in good and due form, have agreed on the following provisions:

ART. 1.—The [High] Contracting [Parties] *Powers* shall issue instructions to their armed land forces, which shall be in conformity with the Regulations respecting the Laws and Customs of War on Land annexed to the present Convention.

ART. 2.—The provisions contained in the Regulations mentioned in Art. 1, *as well as those contained in the present Con-*

*vention, are only applicable as between the Contracting Powers and only if the belligerents are all parties to the Convention.*

ART. 3.—*The belligerent Party who shall violate the provisions of the said Regulations shall be bound, if the case arises, to pay an indemnity. It shall be responsible for all acts done by persons forming part of its armed force.*

ART. 4.—*The present Convention, duly ratified, shall take the place, in the relations between the contracting Powers, of the Convention of July 29, 1899, relating to the laws and customs of war on land.*

*The Convention of 1899 remains in force in the relations between the Powers who have signed it and who do not also ratify the present Convention.*

ART. 5.—*The present Convention shall be ratified as soon as possible, etc.*

(Arts. 6, 7, 8, and 9 formal.)

## APPENDIX TO THE CONVENTION: REGULATIONS RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND.

### SECTION I.—ON BELLIGERENTS.

#### *Chapter I.—On the Qualifications of Belligerents.*

ART. 1.—*The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps, fulfilling the following conditions:—*

(1) *To be commanded by a person responsible for his subordinates;*

(2) *To have a fixed distinctive emblem recognizable at a distance;*

(3) *To carry arms openly; and*

(4) *To conduct their operations in accordance with the laws and customs of war.*

*In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination "army."*

ART. 2.—*The population of a territory which has not been occupied who, on the enemy's approach, spontaneously take*

up arms to resist the invading troops without having time to organize themselves in accordance with Art. 1, shall be regarded as belligerent, if they *carry arms openly* and respect the laws and customs of war.

ART. 3.—The armed forces of the belligerent parties may consist of combatants and non-combatants. In case of capture by the enemy, both have a right to be treated as prisoners of war.

*Chapter II.—On Prisoners of War.*

ART. 4.—Prisoners of war are in the power of the hostile Government, but not in that of the individuals or corps who captured them.

They must be humanely treated.

All their personal belongings, except arms, horses, and military papers, remain their property.

ART. 5.—Prisoners of war may be interned in a town, fortress, camp, or any other locality, and bound not to go beyond certain fixed limits; but they can only be confined as an indispensable measure of safety, *and only so long as circumstances necessitating this measure shall endure.*

ART. 6.—The State may utilize the labour of prisoners of war according to their rank and aptitude, *with the exception of the officers.* Their tasks shall not be excessive, and shall have nothing to do with the military operations.

Prisoners may be authorized to work for the Public Service, for private persons, or on their own account.

Work for the State shall be paid for according to the tariffs in force for soldiers of the national army employed on similar tasks, *or, if there are none in force, then according to a tariff suitable to the work executed.*

When the work is for other branches of the Public Service or for private persons, the conditions shall be settled in agreement with the military authorities.

The wages of the prisoners shall go towards improving their position, and the balance shall be paid them at the time of their release, after deducting the cost of their maintenance.

ART. 7.—The Government into whose hands prisoners of war have fallen is bound to maintain them.

Failing a special agreement between the belligerents,

prisoners of war shall be treated, as regards food, quarters, and clothing, on the same footing as the troops of the Government which has captured them.

ART. 8.—Prisoners of war shall be subject to the laws, regulations, and orders in force in the army of the State into whose hands they have fallen.

Any act of insubordination warrants the adoption, as regards them, of such measures of severity as may be necessary.

Escaped prisoners, recaptured before they have succeeded in rejoining their army, or before quitting the territory occupied by the army that captured them, are liable to disciplinary punishment.

Prisoners who, after succeeding in escaping, are again taken prisoners, are not liable to any punishment for the previous flight.

ART. 9.—Every prisoner of war, if questioned, is bound to declare his true name and rank, and if he disregards this rule, he is liable to a curtailment of the advantages accorded to the prisoners of war of his class.

ART. 10.—Prisoners of war may be set at liberty on parole if the laws of their country authorize it, and, in such a case, they are bound, on their personal honour, scrupulously to fulfil, both as regards their own Government and the Government by whom they were made prisoners, the engagements they have contracted.

In such cases, their own Government shall not require of nor accept from them any service incompatible with the parole given.

ART. 11.—A prisoner of war cannot be forced to accept his liberty on parole; similarly the hostile Government is not obliged to assent to the prisoner's request to be set at liberty on parole.

ART. 12.—Any prisoner of war, who is liberated on parole and recaptured, bearing arms against the Government to whom he had pledged his honour, or against the allies of that Government, forfeits his right to be treated as a prisoner of war, and can be brought before the Courts of Justice.

ART. 13.—Individuals who follow an army without directly belonging to it, such as newspaper correspondents and reporters, sutlers, contractors, who fall into the enemy's hands,

and whom the latter think fit to detain, have a right to be treated as prisoners of war, provided they can produce a certificate from the military authorities of the army they were accompanying.

ART. 14.—A Bureau for information relative to prisoners of war is instituted, on the commencement of hostilities, in each of the belligerent States and, when necessary, in the neutral countries on whose territory belligerents have been received. This Bureau is intended to answer all inquiries about prisoners of war, and is furnished by the various services concerned with all the information necessary [to make out an individual return of every prisoner of war. It is kept informed of internments and changes, also of admissions to hospital and of deaths] *relating to internments and changes, to releases on parole, to exchanges, to escapes, to admissions to hospital, as well as other particulars, to enable it to keep from day to day an individual return for each prisoner of war. The Bureau must enter on this return the regimental number, the name and fore-name, age, place of origin, rank, corps, wounds, date and place of capture, of internment, of wounds, and of death, as well as any special observations. Each return shall be forwarded to the Government of the other belligerent after the conclusion of peace.*

It is also the duty of the information Bureau to receive and collect all objects of personal use, valuables, letters, etc., found on the battlefields or left by prisoners who have *been liberated on parole, exchanged, or have escaped or died in hospital or ambulance*, and to transmit them to those interested.

ART. 15.—Relief Societies for prisoners of war, which are regularly constituted in accordance with the law of the country with the object of serving as the intermediary for charity, shall receive from the belligerents for themselves and their duly accredited agents every facility, within the bounds of military requirements and administrative regulations, for the effective accomplishment of their humane task. Delegates of these Societies may be admitted to the places of internment for the distribution of relief, as also to the halting-places of repatriated prisoners, if furnished with a personal permit by the military authorities, and on giving an engagement in writing to comply with all their regulations for order and police.

ART. 16.—The Information Bureau shall have the privilege of free postage. Letters, money orders, and valuables, as well as postal parcels destined for the prisoners of war or despatched by them, shall be free of all postal rates, both in the countries of origin and destination, as well as in those they pass through.

Gifts and relief in kind for prisoners of war shall be admitted free of all duties of entry and others, as well as of payments for carriage by Government railways.

ART. 17.—Officers taken prisoners *may receive the full pay to which officers of the same grade in the country where they are detained are entitled*, the amount to be repaid by their Government.

ART. 18.—Prisoners of war shall enjoy every latitude in the exercise of their religion, including attendance at their own church services, provided only they comply with the regulations for order and police issued by the military authorities.

ART. 19.—The wills of prisoners of war are received or drawn up on the same conditions as for soldiers of the national army.

The same rules shall be observed regarding death certificates, as well as for the burial of prisoners of war, due regard being paid to their grade and rank.

ART. 20.—After the conclusion of peace, the repatriation of prisoners of war shall take place as speedily as possible.

### *Chapter III.—On the Sick and Wounded.*

ART. 21.—The obligations of belligerents with regard to the sick and wounded are governed by the Geneva Convention [of August 22, 1864, subject to any modifications which may be introduced into it].

## SECTION II.—ON HOSTILITIES.

### *Chapter I.—On Means of injuring the Enemy, Sieges, and Bombardments.*

ART. 22.—The right of belligerents to adopt means of injuring the enemy is not unlimited.

ART. 23.—Besides the prohibitions provided by special Conventions, it is especially prohibited:—

(a) To employ poison or poisoned arms;



(b) To kill or wound treacherously individuals belonging to the hostile nation or army;

(c) To kill or wound an enemy who, having laid down arms, or having no longer means of defence, has surrendered at discretion;

(d) To declare that no quarter shall be given;

(e) To employ arms, projectiles, or material of a nature to cause superfluous injury;

(f) To make improper use of a flag of truce, the national flag, or military ensigns and the enemy's uniform, as well as the distinctive badges, of the Geneva Convention;

(g) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war.

(h) *To declare extinguished, suspended, or unenforceable in justice, the claims and actions of nationals of the adversary.*

*It is also forbidden to a belligerent to compel the natives of the adversary to take part in war operations directed against their country, even if they were in his service before the commencement of the war.*

ART. 24.—Ruses of war and the employment of methods necessary to obtain information about the enemy and the country are considered allowable.

ART. 25.—The attack or bombardment, *by any means whatever*, of towns, villages, habitations, or buildings which are not defended, is prohibited.

ART. 26.—The commander of an attacking force, before commencing a bombardment, except in the case of an assault, should do all he can to warn the authorities.

ART. 27.—In sieges and bombardments all necessary steps should be taken to spare as far as possible edifices devoted to religion, art, science, and charity, hospitals, and places where the sick and wounded are collected, provided they are not used at the same time for military purposes.

The besieged should indicate these buildings or places by some particular and visible signs, which should previously be notified to the assailants.

ART. 28.—The pillage of a town or place, even when taken by assault, is prohibited.

*Chapter II.—On Spies.*

ART. 29.—An individual can only be considered a spy if, acting clandestinely, or on false pretences he obtains, or seeks to obtain, information in the zone of operations of a belligerent, with the intention of communicating it to the adverse party.

Thus, soldiers not in disguise who have penetrated into the zone of operations of a hostile army to obtain information are not considered spies. Similarly, the following are not considered spies: soldiers or civilians, carrying out their mission openly, charged with the delivery of despatches destined either for their own army or for that of the enemy. To this class belong likewise individuals sent in balloons to deliver despatches and generally to maintain communication between the various parts of an army or a territory.

ART. 30.—A spy taken in the act cannot be punished without previous trial.

ART. 31.—A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, is treated as a prisoner of war, and incurs no responsibility for his previous acts of espionage.

*Chapter III.—On Flags of Truce.*

ART. 32.—An individual is considered as bearing a flag of truce who is authorized by one of the belligerents to enter into communication with the other, and who carries a white flag. He has a right to inviolability, as well as the trumpeter, bugler, or drummer, the flag-bearer, and the interpreter who may accompany him.

ART. 33.—The chief to whom a flag of truce is sent is not obliged to receive it in all circumstances.

He can take all steps necessary to prevent the envoy taking advantage of his mission to obtain information.

In case of abuse, he has the right to detain the envoy temporarily.

ART. 34.—The envoy loses his rights of inviolability if it is proved beyond doubt that he has taken advantage of his privileged position to provoke or commit an act of treachery.

*Chapter IV.—On Capitulations.*

ART. 35.—Capitulations agreed on between the Contracting Parties must be in accordance with the rules of military honour.

When once settled, they must be scrupulously observed by both the parties.

*Chapter V.—On Armistices.*

ART. 36.—An armistice suspends military operations by mutual agreement between the belligerent parties. If its duration is not fixed, the belligerent parties can resume operations at any time, provided always the enemy is warned within the time agreed upon, in accordance with the terms of the armistice.

ART. 37.—An armistice may be general or local. The first suspends all military operations of the belligerent States; the second, only those between certain fractions of the belligerent armies and in a fixed radius.

ART. 38.—An armistice must be notified officially, and in good time, to the competent authorities and the troops. Hostilities are suspended immediately after the notification, or at a fixed date.

ART. 39.—It is for the Contracting Parties to settle, in the terms of the armistice, what communications may be held, on the theatre of war, with the population and with each other.

ART. 40.—Any serious violation of the armistice by one of the parties gives the other party the right to denounce it, and even, in case of urgency, to recommence hostilities at once.

ART. 41.—A violation of the terms of the armistice by private individuals acting on their own initiative only confers the right of demanding the punishment of the offenders, and if necessary an indemnity for the losses sustained.

SECTION III.—ON MILITARY AUTHORITY OVER HOSTILE TERRITORY.

ART. 42.—Territory is considered occupied when it is actually placed under the authority of the hostile army.

The occupation applies only to the territory where such authority is established, and in a position to assert itself.

ART. 43.—The authority of the legitimate power having actually passed into the hands of the occupant, the latter shall take all steps in his power to re-establish and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

ART. 44.—Any compulsion of the population of occupied territory [to take part in military operations against its own country] *to give information respecting the army of the other belligerent or its means of defence* is prohibited.

ART. 45.—Any pressure on the population of occupied territory to take the oath to the hostile Power is prohibited.

ART. 46.—Family honour and rights, individual lives and private property, as well as religious convictions and liberty, must be respected.

Private property cannot be confiscated.

ART. 47.—Pillage is formally prohibited.

ART. 48.—If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do so, as far as possible, in accordance with the rules of application and assessments in force, and will in consequence be bound to defray the expenses of the administration of the occupied territory on the same scale as that by which the legitimate Government was bound.

ART. 49.—If, besides the taxes mentioned in the preceding Article, the occupant levies other money taxes in the occupied territory, this can only be for military necessities or the administration of such territory.

ART. 50.—No general penalty, pecuniary or otherwise, can be inflicted on the population on account of the acts of individuals for which it cannot be regarded as collectively responsible.

ART. 51.—No tax shall be collected except under a written order and on the responsibility of a Commander-in-Chief.

This collection shall only take place, as far as possible, in accordance with the rules of application and assessment of taxes in force.

For every payment a receipt shall be given to the tax-payer.

ART. 52.—Neither requisitions in kind nor services can be demanded from communes or inhabitants except for the

necessities of the army of occupation. They must be in proportion to the resources of the country, and of such a nature as not to involve the population in the obligation of taking part in military operations against their country.

These requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

The contributions in kind shall, as far as possible, be paid for in ready money; if not, their receipt shall be acknowledged, *and the payments of the amounts due shall be made as soon as possible.*

ART. 53.—An army of occupation can only take possession of the cash, funds, and property liable to requisition belonging strictly to the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property of the State which may be used for military operations.

[Railway plant, land telegraphs, telephones, steamers, and other ships, apart from cases governed by maritime law, as well as depots of arms, and, generally, all kinds of war material, even though belonging to companies or to private persons, are likewise material which may serve for military operations, but they must be restored at the conclusion of peace, and indemnities paid for them.]

*All apparatus, on land, at sea, or in the air, serving as means for transmission of intelligence or for the transport of persons or things, except in cases governed by maritime law, depots of arms, and, generally, all kinds of munitions of war, may be seized, even if belonging to private individuals, but shall be restored and indemnities settled when peace has been concluded.*

ART. 54.—[The plant of railways coming from neutral States, whether the property of those States, or of companies, or of private persons, shall be sent back to them as soon as possible.] (*Transferred to Convention No. V., Art. 19.*)

*Submarine cables joining an occupied territory to a neutral territory shall not be seized or destroyed except in case of absolute necessity. They shall also be restored and indemnities settled on the conclusion of peace.*

ART. 55.—The occupying State shall only be regarded as administrator and usufructuary of the public buildings, real property, forests, and agricultural works belonging to the

hostile State, and situated in the occupied country. It must protect the capital of these properties, and administer it according to the rules of usufruct.

ART. 56.—The property of the communes, that of religious, charitable, and educational institutions, and those of arts and science, even when State property, shall be treated as private property.

All seizure of, and destruction, or intentional damage done to such institutions, to historical monuments, works of art or science, is prohibited, and should be made the subject of legal proceedings.

[SECTION IV.—ON THE INTERNMENT OF BELLIGERENTS AND THE CARE OF THE WOUNDED IN NEUTRAL COUNTRIES.  
(*Transferred to Convention No. V., Arts. 11 to 14.*)

[ART. 57.—A neutral State which receives in its territory troops belonging to the belligerent armies shall intern them, as far as possible, at a distance from the theatre of war.

It can keep them in camps, and even confine them in fortresses or localities assigned for this purpose.

It shall decide whether officers may be left at liberty on giving their parole that they will not leave the neutral territory without authorization.]

[ART. 58.—Failing a special Convention, the neutral State shall supply the interned with the food, clothing, and relief required by humanity.

At the conclusion of peace, the expenses caused by the internment shall be made good.]

[ART. 59.—A neutral State may authorize the passage through its territory of wounded or sick belonging to the belligerent armies, on condition that the trains bringing them shall carry neither combatants nor war material. In such a case, the neutral State is bound to adopt such measures of safety and control as may be necessary for the purpose.

Wounded and sick brought under these conditions into neutral territory by one of the belligerents, and belonging to the hostile party, must be guarded by the neutral State, so as to ensure their not taking part again in the military operations.

The same duty shall devolve on the neutral State with regard to wounded or sick of the other army who may be committed to its care.]

[ART. 60.—The Geneva Convention applies to sick and wounded interned in neutral territory.]

#### IV.

#### Convention relating to the Rights and Duties of Neutral Powers and Persons in Case of War on Land (No. V).

##### *(Names of High Contracting Powers.)*

In view of defining more precisely the rights and duties of neutral States in case of war on land, and of regulating the situation of refugee belligerents on neutral territory;

Wishing also to define the condition of neutrality until it is possible to regulate, as a whole, the situation of neutral individuals in their relations with belligerents;

Have resolved to come to an agreement to this effect, and have in consequence named as their Plenipotentiaries the following:

##### *(Names and Description of Plenipotentiaries.)*

Who, after having deposited their full powers, found in good and due form, have agreed on the following provisions:

#### CHAPTER I.—RIGHTS AND DUTIES OF NEUTRAL POWERS.

ART. 1.—Neutral territory is inviolable.

ART. 2.—Belligerents are forbidden to send troops or convoys, either of munitions of war or of provisions, through the territory of a neutral State.

ART. 3.—Belligerents are also forbidden:—

(1) To instal, on the territory of a neutral State, a radio-telegraphic station or any apparatus intended to serve as a means of communication with the belligerent forces on land or at sea;

(2) To make use of any installation of like nature, erected by them before the war on the territory of the neutral State, for an exclusively military purpose, and which has not been opened to the service of public correspondence.

**ART. 4.**—Bodies of combatants shall not be formed or recruiting offices opened on territory of a neutral Power for the benefit of the belligerents.

**ART. 5.**—A neutral State shall not allow on its territory any of the acts mentioned in Arts. 2 to 4. It is only bound to repress acts contrary to neutrality in case they have been committed on its own territory.

**ART. 6.**—A neutral State is not responsible where individuals separately pass the frontier to place themselves at the disposal of either belligerent.

**ART. 7.**—A neutral State is not bound to prevent exportation or transit for the account of either belligerent, of arms, munitions of war, and, in general, of anything which may be useful for an army or a fleet.

**ART. 8.**—A neutral State is not bound to prohibit or restrict the use, for belligerents, of telegraphic or telephonic cables, or of wireless telegraphy apparatus, which are its property, or that of companies or private individuals.

**ART. 9.**—Any prohibitive or restrictive measures adopted by a neutral State relative to the matters mentioned in Arts. 7 and 8 shall be applied uniformly by it to both belligerents. The neutral State shall see that this obligation is observed by companies or private individuals owning telegraphic or telephonic cables or wireless telegraphic apparatus.

**ART. 10.**—The act, by a neutral State, of resisting any violation of its neutrality, even by force of arms, cannot be regarded as an act of hostility.

#### **CHAPTER II.—BELLIGERENTS INTERNED AND WOUNDED ON NEUTRAL COUNTRY.**

**ART. 11.**—A neutral State receiving, on its territory, troops belonging to the belligerent armies, shall, as far as possible, keep them distant from the area of hostilities.

It may keep them in camps, and even shut them up in fortified places, or in places suitable for this purpose. It shall decide whether officers may be left at liberty on parole not to leave the neutral territory without authorization.

**ART. 12.**—Where there is no special Convention, a neutral State shall supply interned prisoners with food, clothing, and



the aid which humanity calls for. When peace is established, the cost of keeping the prisoners shall be reimbursed.

ART. 13.—A neutral State receiving escaped prisoners of war shall leave them at liberty. If it allows them to stay on its territory, it may appoint a place of residence for them. The same rule is applicable to prisoners of war brought by troops taking refuge on neutral territory.

ART. 14.—A neutral State may authorize the passage on its territory of wounded or sick belonging to the belligerent armies, on condition that the trains which carry them shall transport none of the fighting force and no materials of war. In such a case, the neutral State is bound to take the necessary steps to ensure safety and control.

The wounded or sick, brought in these circumstances into neutral territory by one of the belligerents, and belonging to the enemy, shall be detained by the neutral State in such a way that they cannot again take part in the hostilities. This neutral State shall discharge the same duties if it be entrusted with the wounded or sick of the other army.

ART. 15.—The Geneva Convention applies to sick and wounded interned on neutral territory.

### CHAPTER III.—NEUTRAL PERSONS.

ART. 16.—The natives of a State not taking part in the hostilities are considered as neutrals.

ART. 17.—A neutral person cannot take advantage of his neutrality:—

- (1) If he commits hostile acts against a belligerent;
- (2) If he commits acts in favour of a belligerent—for instance, if he voluntarily takes service in the ranks of the army of one of the parties.

In such a case the neutral shall not be treated with more severity by the belligerent against whom he has acted in contravention of his neutrality than a native of the other belligerent State would be for the same act.

ART. 18.—The following shall not be considered as acts committed in favour of one of the belligerents, in the sense of Art. 17 (2):—

1. Supplies or loans made to one of the belligerents, provided the purveyor or the lender inhabits neither the territory of the other party nor territory occupied by it, and provided the supplies do not come from these territories;

2. Services rendered in matters of police or civil administration.

#### CHAPTER IV.—RAILWAY PROPERTY.

ART. 19.—Railway property coming from the territory of neutral States, whether it belongs to these States or to companies or to private persons, and distinguishable as such, cannot be requisitioned or utilized by a belligerent, except in such cases and in such a manner as dictated by absolute necessity. Such property shall be returned to its country of origin as soon as possible.

Similarly, the neutral State can, in case of necessity, keep and utilize to an equal extent property coming from the territory of a belligerent State.

An indemnity shall be paid, proportionate to the amount of the property utilized and the duration of utilization.

#### CHAPTER V.—FINAL DISPOSITIONS.

ART. 20.—The provisions of the present Convention are only applicable as among the Contracting Powers, and provided the belligerents are all parties to the Convention.

ART. 21.—The present Convention shall be ratified as soon as possible, etc.

(Arts. 22, 23, 24, and 25 formal.)

### V.

#### **Convention relating to the Treatment of Enemy Merchant Ships at the Commencement of Hostilities (No. VI.).**

*(Names of High Contracting Parties.)*

Desiring to guarantee the security of international commerce against the surprises of war, and wishing, in accordance with modern practice, to protect, as far as possible, operations

entered into in good faith and in course of execution before the opening of hostilities;

Have resolved to conclude a Convention for this purpose, and have appointed as their Plenipotentiaries:

*(Names and Description of Plenipotentiaries.)*

Who, after having deposited their full powers, found in good and due form, have agreed on the following provisions:

ART. 1.—When a merchant ship belonging to one of the belligerent Powers happens to be in an enemy port at the beginning of hostilities, it is desirable that such vessel be allowed to leave the port freely, either immediately, or after a reasonable<sup>1</sup> delay of grace, and, having been provided with a *laissez-passer*, to directly reach its port of destination or any other port which may be assigned to it.

The same shall apply to a vessel which shall have left its last port of call before the beginning of war, and have entered an enemy port unaware of the existence of hostilities.

ART. 2.—Any merchant ship which, owing to *vis major*, may have been prevented from leaving the enemy port within the time referred to in the preceding article, or which may not have been allowed to leave the port, cannot be confiscated.

The belligerent may only keep it on condition of returning it after the war without indemnity, or requisitioning it and paying an indemnity.

ART. 3.—Enemy merchant ships which have left their last port of call before the beginning of hostilities, and which, when met on the high seas, are unaware of the existence of hostilities, cannot be confiscated. They are only subject to seizure provided they are restored after the war without indemnity, or to be requisitioned, or even destroyed, provided an indemnity be paid, and on condition that provision be made for the security of the persons and the preservation of the ship's papers.

After having entered a port of their own country or a neutral port, these vessels are subject to the laws and customs of maritime warfare.

<sup>1</sup> The English equivalent of *suffisant* is "reasonable." The official translation is "sufficient."

**ART. 4.**—Enemy goods on board the vessels referred to in Arts. 1 and 2 are also subject to be seized and restored after the war without indemnity, or to be requisitioned with indemnity, in conjunction with or apart from the vessel.

The same shall apply to goods on board the vessels referred to in Art. 3.

**ART. 5.**—The present Convention does not apply to merchant ships whose build indicates that they are intended to be transformed into war vessels.

**ART. 6.**—The provisions of the present Convention are only applicable as among the Contracting Powers, and provided the belligerents are all parties to the Convention.

**ART. 7.**—The present Convention shall be ratified as soon as possible, etc.

(Arts. 8, 9, 10, and 11 formal.)

## VI.

### **Convention relating to the Conversion of Merchant Ships into Vessels of War (No. VII.).**

#### *(Names of the High Contracting Parties.)*

Considering that in view of the incorporation,<sup>1</sup> in time of war, of merchant vessels in combatant fleets, it is desirable to define the conditions under which this can be effected;

That, nevertheless, the Contracting Powers not having been able to come to an agreement on the question whether the transformation of a merchant-ship into a war vessel may take place on the high sea, it is agreed that the question of the place of transformation is not a matter dealt with, and is in no way affected by the understated rules;

Desiring to conclude a Convention for this purpose, have appointed as their Plenipotentiaries:

#### *(Names and Description of Plenipotentiaries.)*

Who, after having deposited their full powers, found in good and due form, have agreed as follows:

<sup>1</sup> This means "possible incorporation."

ART. 1.—No merchant ship transformed into a war vessel can have the rights and obligations attaching to this condition unless it is placed under the direct authority, the immediate control, and the responsibility of the Power whose flag it carries.

ART. 2.—Merchant ships transformed into war vessels must bear the distinctive external signs of war vessels of their nationality.

ART. 3.—The officer commanding must be in the service of the State, and properly commissioned by the competent authorities. His name must appear in the list of officers of the combatant fleet.

ART. 4.—The crew must be subject to the rules of military discipline.

ART. 5.—Every merchant ship transformed into a war vessel is bound to conform, in its operations, to the laws and customs of war.

ART. 6.—The belligerent who transforms a merchant ship into a war vessel must, as soon as possible, mention this transformation on the list of vessels belonging to its combatant fleet.

ART. 7.—The provisions of the present Convention are only applicable as among the Contracting Powers and provided the belligerents are all parties to the Convention.

ART. 8.—The present Convention shall be ratified as soon as possible, etc.

(Arts. 9, 10, 11, and 12 formal.)

## VII.

### **Convention relating to the Employment of Submarine Mines acting automatically by Contact (No. VIII.).**

#### *(Names of the High Contracting Parties.)*

Having regard to the principle of the freedom of sea-routes open to all nations;

Considering that, if in the present state of things the use of submarine mines with automatic contact cannot be forbidden, it is important to limit and regulate their use, in order to restrict

the rigours of war and to give, as far as possible, to peaceful navigation the security it has the right to claim, in spite of the existence of a war;

Pending the possibility of settling the matter in a way affording the interests involved every desirable guarantee;

Have resolved to conclude a Convention to this effect, and have appointed as their Plenipotentiaries:

*(Names and Description of Plenipotentiaries.)*

Who, after having deposited their full powers, found in good and due form, have agreed as follows:

ART. 1.—It is forbidden—

(1) To place automatic mines of contact, not moored, unless they are so constructed as to become harmless one hour at most after those who have placed them have lost control over them;

(2) To place automatic mines of contact which are moored, if they do not become harmless when they have broken from their moorings;

(3) To employ torpedoes which do not become harmless when they have missed their object.

ART. 2.—It is forbidden to place automatic contact mines along the enemy coast or ports, with the sole object of intercepting commercial navigation.

ART. 3.—When moored automatic contact mines are used, all possible precautions should be taken for the security of peaceful navigation.

Belligerents undertake to arrange, as far as possible, that these mines shall become harmless after a limited lapse of time, and, when they cease to be guarded, to notify the dangerous regions, as soon as military exigencies permit, by a notice to navigation, which should also be communicated to Governments through the diplomatic channel.

ART. 4.—Every neutral Power placing automatic contact mines along its coasts must observe the same rules and take the same precautions as those imposed on belligerents.

A neutral Power must notify navigation, by previous notice, of the places where automatic contact mines are moored. This communication should be made without delay to Governments through the diplomatic channel.

ART. 5.—At the termination of the war, the Contracting Powers undertake to do everything in their power, each on its own side, to remove the mines which they have placed.

With respect to moored automatic contact mines which either of the belligerents may have placed along the coast of the other, the spots where they have been placed shall be notified by the Power which has placed them to the other Power, and each Power must proceed as soon as possible to remove the mines in its waters.

ART. 6.—Contracting Powers which have not yet at their disposal improved mines such as provided for in this Convention, and who consequently cannot at present comply with the rules laid down in Arts. 1 and 3, undertake to alter their stock of mines as soon as possible, in order to comply with the above-mentioned rules.

ART. 7.—The provisions of the present Convention are only applicable as among the Contracting Powers, and provided the belligerents are all parties to the Convention.

ART. 8.—The present Convention shall be ratified as soon as possible, etc. (Arts. 9, 10, 11, 12, and 13 formal; Art. 11, however, providing that the High Contracting Powers shall have power to denounce the Convention after expiry of seven years, dating from the sixtieth day after the first deposit of ratifications.)

## VIII.

### Convention relating to Bombardment by Naval Forces in Time of War (No. IX.).

*(Names of the High Contracting Parties.)*

Animated by the desire to realize the *vœu* expressed by the First Peace Conference concerning the bombardment by naval forces of undefended ports, towns, and villages;

Considering that it is of importance to subject bombardments by naval forces to general provisions guaranteeing the rights of the inhabitants and ensuring the preservation of the principal buildings, by extending to this operation of war, as far as possible, the principles of the regulations of 1899 with respect to the laws and customs of war on land;

Thus inspired by the desire to serve the interest of humanity and to lessen the rigours and disasters of war;

Have resolved to enter into a Convention for this purpose, and have in consequence appointed as their Plenipotentiaries:

*(Names and Description of Plenipotentiaries.)*

Who, having deposited their full powers, found to be in good and due form, have agreed as follows:

**CHAPTER I.—BOMBARDMENT OF UNDEFENDED PORTS, TOWNS, VILLAGES, HABITATIONS OR BUILDINGS.**

**ART. 1.**—It is forbidden to bombard by naval forces undefended ports, towns, villages, habitations or buildings.

A place may not be bombarded for the sole reason that submarine automatic contact mines are moored in front of its port.

**ART. 2.**—Nevertheless, this interdiction does not comprise military works, military or naval establishments, depots of arms or war material, workshops or installations suitable to be used for the requirements of the enemy's army or fleet, and war vessels in the port. The commander of a naval force may, after summons with a reasonable delay, destroy them by cannon if no other means are possible, and when the local authorities shall not have proceeded to their destruction within the delay fixed.

In this case he incurs no responsibility for involuntary damage which may be occasioned by the bombardment.

If military necessity, requiring immediate action, does not admit of any delay, it remains understood that the prohibition to bombard an undefended town continues as in the case set out in Sect. 1, and that the commander will take all the desired precautions to occasion the least possible inconvenience to the town.

**ART. 3.**—After express notice, bombardment of undefended ports, towns, villages, habitations or buildings may be proceeded with if the local authorities, having received formal notice, refuse to comply with requisitions for food or supplies required for the immediate wants of the naval force facing the place.



These requisitions must be in proportion to the resources of the place. They shall not be demanded without the authority of the commander of the said naval force, and shall, as far as possible, be paid for in cash; if not, they shall be acknowledged by receipts.

ART. 4.—The bombardment of undefended ports, towns, villages, habitations or buildings for non-payment of money contributions is forbidden.

#### CHAPTER II.—GENERAL DISPOSITIONS.

ART. 5.—In a bombardment by naval forces, all necessary steps should be taken by the commander to spare, as far as possible, buildings devoted to worship, art, science, and charity, historic monuments, hospitals and places for the reception of sick or wounded, provided they are not at the same time used for military purposes.

It is the duty of the inhabitants to indicate these monuments, buildings, or places by distinctive signs, which shall consist of large rectangular rigid screens, divided at one of the diagonals into two triangles, black above and white below.

ART. 6.—Unless military exigencies prevent it, the commander of the attacking naval force should before commencing the bombardment do everything in his power to warn the authorities.

ART. 7.—It is forbidden to give over a town or locality to pillage, even if taken by assault.

#### CHAPTER III.—FINAL PROVISIONS.

ART. 8.—The provisions of the present Convention are only applicable as among the Contracting Powers, and provided the belligerents are all parties to the Convention.

ART. 9.—The present Convention shall be ratified as soon as possible, etc.

(Arts. 10, 11, 12, and 13 formal.)

## IX.

**Convention relating to Certain Restrictions in the Exercise of the Right of Capture in Maritime War (No. XI).***(Names of the High Contracting Parties.)*

Recognizing the necessity of assuring the equitable application of law to international maritime relations in time of war better than in the past;

Being of opinion that, in view of this object, it is desirable, by abandoning or reconciling, if need be, in the common interest, certain old divergent practices, to undertake to codify into general rules the guarantees requisite for peaceful commerce and inoffensive work, as well as the conduct of maritime warfare; that it is necessary to fix in mutual written engagements principles which down to the present have been left to the drifting region of controversy or to the arbitrary action of governments;

That it is now possible to fix a certain number of rules, without interfering with the law at present in force, concerning matters not provided for therein;

Have appointed as their Plenipotentiaries the following:

*(Names and Description of Plenipotentiaries.)*

Who, after having deposited their full powers, found in good and due form, have agreed on the following provisions:

**CHAPTER I.—POSTAL CORRESPONDENCE.**

**ART. 1.**—Postal correspondence of neutrals or of belligerents, whether it be of an official or of a private character, which shall be found at sea on board a neutral or enemy vessel, is inviolable. If the vessel is seized, the correspondence shall be sent on with as little delay as possible by the captor.

The provisions of the preceding paragraph shall not apply in case of violation of a blockade, to correspondence destined for or coming from the blockaded port.

**ART. 2.**—The inviolability of postal correspondence does not exempt neutral mail-ships from the laws and customs of maritime warfare relating to neutral merchant ships in general.

Nevertheless, visit and search should only be exercised in respect of them in case of necessity, and then with every consideration and all possible speed.

CHAPTER II.—ON THE EXEMPTION FROM CAPTURE OF  
CERTAIN BOATS.

ART. 3.—Boats solely intended for coast fishing or for petty local navigation are exempt from capture, as well as their appliances, rigging, fittings, and cargo.

This exemption ceases to apply to them whenever they in any way take part in the hostilities.

The Contracting Powers undertake not to take advantage of the inoffensive character of the said boats, and employ them for military purposes while at the same time preserving their inoffensive appearance.

ART. 4.—Are likewise exempt from capture vessels entrusted with religious, scientific or philanthropic missions.

CHAPTER III.—RULES AS TO CREWS OF ENEMY MERCHANT  
SHIPS CAPTURED BY A BELLIGERENT.

ART. 5.—When an enemy merchant ship is captured by a belligerent, its crew, if belonging to a neutral State, are not made prisoners of war.

The same applies to the captain and officers when belonging to a neutral State, provided they deliberately undertake in writing not to serve on an enemy vessel during the war.

ART. 6.—The captain, officers and members of the crew, if belonging to the enemy State, are not made prisoners of war provided they undertake by a deliberate written promise not to enter, during the hostilities, any service relating to the operations of war.

ART. 7.—The names of the persons left free under the conditions set out in Art. 5, Sect. 2, and in Art. 6, are notified by the capturing belligerent to the other belligerent. The latter is forbidden knowingly to employ the said persons.

ART. 8.—The provisions of the three preceding articles do not apply to vessels which take part in the hostilities.

CHAPTER IV.—FINAL PROVISIONS.

ART. 9.—The provisions of the present Convention are only applicable as among the Contracting Powers, and provided the belligerents are all parties to the Convention.

ART. 10.—The present Convention shall be ratified as soon as possible, etc.

(Arts. 11, 12, 13, and 14 formal.)

X.

**Convention relating to the Rights and Duties of Neutral Powers in Case of Maritime War (No. XIII.).**

*(Names of the High Contracting Parties.)*

With a view to diminish the divergencies of opinion which, in case of maritime war, still exist with respect to the relations between neutral and belligerent Powers, and to avert the difficulties which may arise from these divergencies;

Whereas, though it is impossible at present to make stipulations applicable to every case which may arise in practice, it is, nevertheless, unquestionably useful to establish, with respect to what may happen, some universal rules in the event of war unfortunately breaking out;

Whereas, with respect to cases not provided for by the present Convention, the general principles of the law of nations should be taken into account;

Whereas it is desirable that the Powers should lay down precise stipulations to regulate the consequences of the status of neutrality which they may have adopted;

Whereas it is a recognized duty of neutral Powers to apply impartially to the different belligerents the rules adopted by them;

Whereas, in this respect, these rules should not, in principle, be altered, during the course of a war, by a neutral Power, except in case of experience having shown the necessity of doing so, for the preservation of its own rights;

Have agreed to observe the following common rules, which, however, shall in no way affect the stipulations of existing general treaties, and have appointed as their Plenipotentiaries;

*(Names and Description of Plenipotentiaries.)*

Who, after having deposited their full powers, found in good and due form, have agreed as follows:

ART. 1.—Belligerents are bound to respect the sovereign rights of neutral Powers, and to abstain, either on the territory or in neutral waters, from all acts which might constitute on the part of the Powers permitting them a non-observance of their neutrality.

ART. 2.—All acts of hostility, including capture and the exercise of the right of visit and search by belligerent ships of war in the territorial waters of a neutral Power, constitute a breach of neutrality, and are strictly forbidden.

ART. 3.—When a vessel has been captured in the territorial waters of a neutral Power, this Power shall, if the prize is still within its jurisdiction, use all means in its power to effect the release of the prize and its officers and crew, and that the crew placed on board by the captor shall be interned.

If the prize is out of the jurisdiction of the neutral Power, the capturing Government shall, on the request of the former, release the prize with its officers and crew.

ART. 4.—No Prize Court can be constituted by a belligerent on neutral territory, or on a vessel in neutral waters.

ART. 5.—Belligerents are forbidden to make neutral ports and waters the base of naval operations against their adversaries, especially by installing radio-telegraphic stations or any apparatus which may serve as means of communication with belligerent forces on sea or on land.

ART. 6.—The supply, under any ground whatever, either directly or indirectly, by a neutral Power to a belligerent Power, of ships of war, or of munitions, or of material of war of any kind, is forbidden.

ART. 7.—A neutral Power is not bound to prevent the exportation or transit, for the account of either belligerent, of arms, munitions of war, or, in general, of anything which may be useful to an army or a fleet.

ART. 8.—A neutral Government is bound to use the means at its disposal to prevent, within its jurisdiction, the equipping or arming of any vessel, which it has any reasonable suspicion of being destined to act as a cruiser or to join in hostile operations against a Power with which it is at peace.

It is also bound to exercise the same vigilance to prevent the

departure out of its jurisdiction of any vessel intending to act as a cruiser or take part in hostile operations, and which, within the said jurisdiction, may have been adapted either wholly or in part for warlike purposes.

ART. 9.—A neutral Power must apply equally to the two belligerents the restrictions, conditions or interdictions specified by it relating to admission to its ports, roadsteads, or territorial waters, with respect to ships of war or their prizes.

A neutral Power may, however, forbid access to its ports and roadsteads to any belligerent vessel which may have neglected to comply with the orders and directions issued by it, or may have committed a breach of neutrality.

ART. 10.—The neutrality of a Power is not compromised by the simple passage through its territorial waters of belligerent ships of war and of their prizes.

ART. 11.—A neutral Power may allow ships of war of belligerents to make use of its licensed pilots.

ART. 12.—In default of other special provisions in the laws of a neutral Power, ships of war of belligerents are forbidden to remain in the ports or roadsteads or in the territorial waters of the said Power for more than twenty-four hours, except in the cases provided for by the present Convention.

ART. 13.—If a Power which has received notice of the commencement of hostilities learns that a ship of war of a belligerent is in one of its ports and roadsteads or in its territorial waters, it shall notify the said ship that it must leave within twenty-four hours, or within the time prescribed by the local law.

ART. 14.—A belligerent ship of war may not prolong its stay in a neutral port beyond the legal period, except for the purpose of repairing damage or by reason of the state of the sea. It must leave as soon as the cause of the delay has ceased.

The rules relating to the limitation of stay in ports, roadsteads, and neutral waters do not apply to ships of war exclusively employed on religious, scientific, or philanthropic missions.

ART. 15.—In default of other special provisions in the laws of the neutral Power, the maximum number of ships of war of

a belligerent which may be at the same time in one of its ports or roadsteads shall be three.

ART. 16.—When ships of war of two belligerents are at the same time in a neutral port or roadstead, twenty-four hours, at least, must elapse between the departure of the ship of either belligerents before that of the other.

The order of departure shall be regulated by the order of arrival, unless the vessel arriving first is entitled to a prolongation of the legal period of its stay.

A belligerent ship of war may not leave a neutral port or roadstead until at least twenty-four hours after the departure of a merchant vessel carrying the flag of its adversary.

ART. 17.—In neutral ports and roadsteads, belligerent ships of war may only repair damage to the extent indispensable for their seaworthiness, and may not in any way increase their military strength. The neutral authority will ascertain the nature of the repairs to be executed, which shall be carried out as rapidly as possible.

ART. 18.—Belligerent ships of war may not make use of neutral ports, roadsteads, and territorial waters for the purpose of renewing or increasing their military equipment or armament, or for completing their crews.

ART. 19.—Belligerent ships may not revictual in neutral ports or roadsteads, except to complete their normal supplies as in time of peace, these ships may also only take on board the fuel necessary for the purpose of reaching the nearest port of their own country. They may also take in fuel sufficient to fill up their bunkers properly so-called, if they are in a neutral country which has adopted this method of fixing the amount of fuel to be supplied.

If, according to the law of the neutral Power, ships may only receive coal twenty-four hours after their arrival, the legal period of their stay is prolonged for twenty-four hours.

ART. 20.—Belligerent ships of war which have taken in fuel in the port of a neutral Power cannot renew their supply in a port of the same Power within three months.

ART. 21.—A prize may not be brought into a neutral port except by reason of its unseaworthiness, or of the state of the sea, or of insufficiency of fuel or provisions.

It must leave again as soon as the cause of its entry has ceased. If it does not do so, the neutral Power shall give it notice to leave immediately; in the event of its not complying therewith, the neutral Power shall use the means at its disposal to release it with its officers and crew and intern the crew placed on board by the captor.

ART. 22.—The neutral Power shall also release any prize which has been brought in not in accordance with the conditions laid down in Art. 21.

ART. 23.—A neutral Power may allow access to its ports and roadsteads to prizes, whether escorted or not, when they have been brought there to be left in sequestration pending the decision of a Prize Court. It may have the prize conducted to any other of its ports.

If the prize is escorted by a ship of war, the officers and men placed on board by the captor are allowed to go on board the escorting ship.

If the prize is navigating alone, the personnel placed on board is set at liberty.

ART. 24.—If, in spite of notice from the neutral authority, a belligerent ship of war does not leave a port in which it has no right to remain, the neutral Power has the right to take such steps as it may think proper to render the ship incapable of going to sea during the continuance of the war, and the commander of the ship must facilitate the taking of such steps.

When a belligerent ship is detained by a neutral Power, the officers and crew are also detained.

The officers and crew thus detained may be left on board the ship or lodged either on board another vessel or on shore, and they may be subjected to such restrictive measures as may be considered necessary to be imposed on them. In any event, sufficient men must be left on board the ship to keep it in order.

The officers may be released on giving their parole not to leave the neutral territory without permission.

ART. 25.—A neutral Power is bound to exercise such vigilance as the means in its power permit, to prevent within its ports or roadsteads and in its waters any violation of the preceding provisions.

ART. 26.—The exercise by a neutral Power of the rights



defined by the present Convention can never be considered as an unfriendly act by either belligerent who has accepted the Articles relating thereto.

ART. 27.—The Contracting Powers will communicate to each other, as soon as feasible, all the laws, ordinances, and other provisions which within their jurisdiction govern belligerent ships of war in their ports and waters, by means of a notification addressed to the Government of the Netherlands, and immediately transmitted by the latter to the other Contracting Powers.

ART. 28.—The provisions of the present Convention are only applicable as between the Contracting Powers, and only if the belligerents are all parties thereto.

ART. 29.—The present Convention shall be ratified as soon as possible, etc.

(Arts. 30, 31, 32, and 33 formal.)

## XI.

### **Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field.**

*(Official Translation.)*

*(Names of Sovereigns and Chiefs of States.)*

Being equally animated by the desire of mitigating, as far as possible, the evils inseparable from war, and desiring, with this end in view, to improve and to complete the arrangements agreed upon at Geneva on August 22, 1864, for the amelioration of the condition of wounded or sick soldiers in armies in the field;

Have resolved to conclude for this purpose a new Convention, and have named as their Plenipotentiaries, that is to say:

*(Names and Description of Plenipotentiaries.)*

Who, after having communicated to each other their full powers, found in good and due form, have agreed as follows:

## CHAPTER I.—THE WOUNDED AND SICK.

ART. 1.—Officers and soldiers, and other persons officially attached to armies, shall be respected and taken care of when wounded or sick by the belligerent in whose power they may be, without distinction of nationality.

Nevertheless, a belligerent who is compelled to abandon sick or wounded to the enemy shall, as far as military exigencies permit, leave with them a portion of his medical personnel and material to contribute to the care of them.

ART. 2.—Except as regards the treatment to be provided for them in virtue of the preceding Article, the wounded and sick of an army who fall into the hands of the enemy are prisoners of war, and the general provisions of International Law concerning prisoners are applicable to them.

Belligerents are, however, free to arrange with one another such exceptions and mitigations with reference to sick and wounded prisoners as they may judge expedient; in particular they will be at liberty to agree—

To restore to one another the wounded left on the field after a battle;

To repatriate any wounded and sick whom they do not wish to retain as prisoners, after rendering them fit for removal or after recovery;

To hand over to a neutral State, with the latter's consent, the enemy's wounded and sick to be interned by the neutral State until the end of hostilities.

ART. 3.—After each engagement the commander in possession of the field shall take measures to search for the wounded, and to ensure protection against pillage and maltreatment both for the wounded and for the dead.

He shall arrange that a careful examination of the bodies is made before the dead are buried or cremated.

ART. 4.—As early as possible each belligerent shall send to the authorities of the country or army to which they belong the military identification marks or tokens found on the dead, and a nominal roll of the wounded or sick who have been collected by him. The belligerents shall keep each other mutually informed of any internments and changes, as well as of admissions into hospital and deaths among the wounded and

sick in their hands. They shall collect all the articles of personal use, valuables, letters, etc., which are found on the field of battle or left by the wounded or sick who have died in the medical establishments or units, in order that such objects may be transmitted to the persons interested by the authorities of their own country.

ART. 5.—The competent military authority may appeal to the charitable zeal of the inhabitants to collect and take care of, under his direction, the wounded or sick of armies, granting to those who respond to the appeal special protection and certain immunities.

#### CHAPTER II.—MEDICAL UNITS AND ESTABLISHMENTS.

ART. 6.—Mobile medical units (that is to say, those which are intended to accompany armies into the field) and the fixed establishments of the medical service shall be respected and protected by the belligerents.

ART. 7.—The protection to which medical units and establishments are entitled ceases if they are made use of to commit acts harmful to the enemy.

ART. 8.—The following facts are not considered to be of a nature to deprive a medical unit or establishment of the protection guaranteed by Art. 6:

- (1) That the personnel of the unit or of the establishment is armed, and that it uses its arms for its own defence or for that of the sick and wounded under its charge;
- (2) That in default of armed orderlies the unit or establishment is guarded by a piquet or by sentinels furnished with an authority in due form;
- (3) That weapons and cartridges taken from the wounded and not yet handed over to the proper department are found in the unit or establishment.

#### CHAPTER III.—PERSONNEL.

ART. 9.—The personnel engaged exclusively in the collection, transport, and treatment of the wounded and the sick, as well as in the administration of medical units and establishments, and the chaplains attached to armies, shall be respected and protected under all circumstances. If they fall into the hands of the enemy, they shall not be treated as prisoners of war.

These provisions apply to the guard of medical units and establishments under the circumstances indicated in Art. 8 (2).

ART. 10.—The personnel of Voluntary Aid Societies, duly recognized and authorized by their Government, who may be employed in the medical units and establishments of armies, is placed on the same footing as the personnel referred to in the preceding Article, provided always that the first-mentioned personnel shall be subject to military law and regulations.

Each State shall notify to the other, either in time of peace or at the commencement of or during the course of hostilities, but in every case before actually employing them, the names of the Societies which it has authorized, under its responsibility, to render assistance to the regular medical service of its armies.

ART. 11.—A recognized Society of a neutral country can only afford the assistance of its medical personnel and units to a belligerent with the previous consent of its own Government and the authorization of the belligerent concerned.

A belligerent who accepts such assistance is bound to notify the fact to his adversary before making any use of it.

ART. 12.—The persons designated in Arts. 9, 10, and 11, after they have fallen into the hands of the enemy, shall continue to carry on their duties under his direction.

When their assistance is no longer indispensable, they shall be sent back to their army or to their country at such time and by such route as may be compatible with military exigencies.

They shall then take with them such effects, instruments, arms, and horses as are their private property.

ART. 13.—The enemy shall secure to the persons mentioned in Art. 9, while in his hands, the same allowances and the same pay as are granted to the persons holding the same rank in his own army.

#### CHAPTER IV.—MATERIAL.

ART. 14.—If mobile medical units fall into the hands of the enemy, they shall retain their material, including their teams, irrespectively of the means of transport and the drivers employed.

Nevertheless, the competent military authority shall be free to use the material for the treatment of the wounded and sick.

It shall be restored under the conditions laid down for the medical personnel, and so far as possible at the same time.

ART. 15.—The buildings and material of fixed establishments remain subject to the laws of war, but may not be diverted from their purpose so long as they are necessary for the wounded and the sick.

Nevertheless, the commanders of troops in the field may dispose of them, in case of urgent military necessity, provided they make previous arrangements for the welfare of the wounded and sick who are found there.

ART. 16.—The material of Voluntary Aid Societies which are admitted to the privileges of the Convention under the conditions laid down therein is considered private property, and, as such, to be respected under all circumstances, saving only the right of requisition recognized for belligerents in accordance with the laws and customs of war.

#### CHAPTER V.—CONVOYS OF EVACUATION.

ART. 17.—Convoys of evacuation shall be treated like mobile medical units, subject to the following special provisions:

(1) A belligerent intercepting a convoy may break it up if military exigencies demand, provided he takes charge of the sick and wounded who are in it.

(2) In this case, the obligation to send back the medical personnel provided for in Art. 12, shall be extended to the whole of the military personnel detailed for the transport or the protection of the convoy and furnished with an authority in due form to that effect.

The obligation to restore the medical material, provided for in Art. 14, shall apply to railway trains and boats used in internal navigation, which are specially arranged for evacuations, as well as to the material belonging to the medical service for fitting up ordinary vehicles, trains, and boats.

Military vehicles, other than those of the medical service, may be captured with their teams.

The civilian personnel and the various means of transport obtained by requisition, including railway material and boats used for convoys, shall be subject to the general rules of International Law.

## CHAPTER VI.—THE DISTINCTIVE EMBLEM.

ART. 18.—As a compliment to Switzerland, the heraldic emblem of the red cross on a white ground, formed by reversing the Federal colours, is retained as the emblem and distinctive sign of the medical service of armies.

ART. 19.—With the permission of the competent military authority this emblem shall be shown on the flags and armlets (brassards), as well as on all the material belonging to the medical service.

ART. 20.—The personnel protected in pursuance of Arts. 9 (para. 1), 10, and 11 shall wear, fixed to the left arm, an armlet (brassard) with a red cross on a white ground, delivered and stamped by the competent military authority, and accompanied by a certificate of identity in the case of persons who are attached to the medical service of armies, but who have not a military uniform.

ART. 21.—The distinctive flag of the Convention shall only be hoisted over those medical units and establishments which are entitled to be respected under the Convention, and with the consent of the military authorities. It must be accompanied by the national flag of the belligerent to whom the unit or establishment belongs.

Nevertheless, medical units which have fallen into the hands of the enemy, so long as they are in that situation, shall not fly any other flag than that of the Red Cross.

ART. 22.—The medical units belonging to neutral countries which may be authorized to afford their services under the conditions laid down in Art. 11 shall fly, along with the flag of the Convention, the national flag of the belligerent to whose army they are attached.

The provisions of the second paragraph of the preceding Article are applicable to them.

ART. 23.—The emblem of the red cross on a white ground and the words "Red Cross" or "Geneva Cross" shall not be used, either in time of peace or in time of war, except to protect or to indicate the medical units and establishments and the personnel and material protected by the Convention.

**CHAPTER VII.—APPLICATION AND CARRYING OUT OF  
THE CONVENTION.**

**ART. 24.**—The provisions of the present Convention are only binding upon the Contracting Powers in the case of war between two or more of them. These provisions shall cease to be binding from the moment when one of the belligerent Powers is not a party to the Convention.

**ART. 25.**—The commanders-in-chief of belligerent armies shall arrange the details for carrying out the preceding Articles, as well as for cases not provided for, in accordance with the instructions of their respective Governments and in conformity with the general principles of the present Convention.

**ART. 26.**—The Signatory Governments will take the necessary measures to instruct their troops, especially the personnel protected, in the provisions of the present Convention, and to bring them to the notice of the civil population.

**CHAPTER VIII.—PREVENTION OF ABUSES AND  
INFRACTIONS.**

**ART. 27.**—The Signatory Governments, in countries the legislation of which is not at present adequate for the purpose, undertake to adopt or to propose to their legislative bodies such measures as may be necessary to prevent at all times the employment of the emblem or the name of Red Cross or Geneva Cross by private individuals or by Societies other than those which are entitled to do so under the present Convention, and in particular for commercial purposes as a trade-mark or trading-mark.

The prohibition of the employment of the emblem or the names in question shall come into operation from the date fixed by each legislature, and at the latest five years after the present Convention comes into force. From that date it shall no longer be lawful to adopt a trade-mark or trading-mark contrary to this prohibition.

**ART. 28.**—The Signatory Governments also undertake to adopt, or to propose to their legislative bodies, should their military law be insufficient for the purpose, the measures necessary for the repression in time of war of individual acts

of pillage and maltreatment of the wounded and sick of armies, as well as for the punishment, as an unlawful employment of military insignia, of the improper use of the Red Cross flag and armlet (brassard) by officers and soldiers or private individuals not protected by the present Convention.

They shall communicate to one another, through the Swiss Federal Council, the provisions relative to these measures of repression at the latest within five years from the ratification of the present Convention.

#### GENERAL PROVISIONS.

ART. 29.—The present Convention shall be ratified as soon as possible. The ratifications shall be deposited at Berne.

When each ratification is deposited, a *procès-verbal* shall be drawn up, and a copy thereof certified as correct shall be forwarded through the diplomatic channel to all the Contracting Powers.

ART. 30.—The present Convention shall come into force for each Power six months after the date of the deposit of its ratification.

ART. 31.—The present Convention, duly ratified, shall replace the Convention of August 22, 1864, in relations between the Contracting States.

The Convention of 1864 remains in force between such of the parties who signed it who may not likewise ratify the present Convention.

ART. 32.—The present Convention may be signed until December 31 next by the Powers represented at the Conference which was opened at Geneva on June 11, 1906, as also by the Powers, not represented at that Conference, which signed the Convention of 1864.

Such of the aforesaid Powers as shall not have signed the present Convention by December 31, 1906, shall remain free to accede to it subsequently. They shall notify their accession by means of a written communication addressed to the Swiss Federal Council, and communicated by the latter to all the Contracting Powers.

Other Powers may apply to accede in the same manner, but



their request shall only take effect if within a period of one year from the notification of it to the Federal Council no objection to it reaches the Council from any of the Contracting Powers.

## XII.

### Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention (No. X).

[*N.B.—Great Britain being bound by the older Convention of 1899, the older text is given with the later one. Where there have been alterations, the older text is between brackets, the new one in italics.*]

(*Names of High Contracting Parties.*)

Her Majesty the Queen, etc.

Alike animated by the desire to diminish, as far as depends on them, the evils inseparable from warfare; and wishing with this object to adapt to maritime warfare the principles of the Geneva Convention of [August 22, 1864], July 6, 1906; have decided to conclude a Convention for the purpose of revising the Convention of July 29, 1899, relative to the same subject, and have

[They have, in consequence], appointed as their Plenipotentiaries, etc.:

(*Names and Description of Plenipotentiaries.*)

Who, after [communication] *deposit* of their full powers, found in good and due form, have agreed on the following provisions:

ART. I.—Military hospital-ships, that is to say, ships constructed or assigned by States specially and solely for the purpose of assisting the wounded, sick, or shipwrecked, and the names of which shall have been communicated to the belligerent Powers at the commencement or during the course of hostilities, and in any case before they are employed, shall be respected and cannot be captured while hostilities last.

These ships, moreover, are not on the same footing as men-of-war as regards their stay in a neutral port.

ART. 2.—Hospital-ships, equipped wholly or in part at the cost of private individuals or officially recognized Relief Societies, shall likewise be respected and exempt from capture, provided the belligerent Power to whom they belong has given them an official commission, and has notified their names to the hostile Power at the commencement of or during hostilities, and in any case before they are employed.

These ships should be furnished with a certificate from the competent authorities, declaring that they had been under their control while fitting out and on final departure.

ART. 3.—Hospital-ships, equipped wholly or in part at the cost of private individuals or officially recognized Societies of neutral countries, shall be respected and exempt from capture [if the neutral Power to whom they belong has given them an official commission and notified their names to the belligerent Powers at the commencement of or during hostilities, and in any case before they are employed], *on condition that they have placed themselves under the control of one of the belligerents, with the previous approval of their own Government, and with the authorization of the belligerent himself, and that the latter has notified their name to his adversary from the commencement of or during hostilities, in any case, before they are employed.*

ART. 4.—The ships mentioned in Arts. 1, 2, and 3 shall afford relief and assistance to the wounded, sick, and shipwrecked of the belligerents independently of their nationality.

The Governments pledge themselves not to use these ships for any military purpose.

These ships must not in any way hamper the movements of the combatants.

During and after an engagement they will act at their own risk and peril.

The belligerents will have the right to control and visit them; they can refuse to help them, order them off, make them take a certain course, and put a commissioner on board; they can even detain them, if important circumstances require it.

As far as possible the belligerents shall inscribe in the sailing papers of the hospital-ships the orders they give them.

ART. 5.—The military hospital-ships shall be distinguished by being painted white outside with a horizontal band of green about a metre and a half in breadth.

The ships mentioned in Arts. 2 and 3 shall be distinguished by being painted white outside with a horizontal band of red about a metre and a half in breadth.

The boats of the ships above mentioned, as also small craft which may be used for hospital work, shall be distinguished by similar painting.

All hospital-ships shall make themselves known by hoisting, together with their national flag, the white flag with a red cross provided by the Geneva Convention, and besides, if they belong to a neutral State, by flying at the mainmast the national flag of the belligerent, under whose control they have placed themselves.

*The hospital-ships that, in the terms of Art. 4, are detained by the enemy must haul down the national flag of the belligerent to which they belong.*

*The ships and boats above referred to, which at night wish to ensure the immunities to which they are entitled, must, with the consent of the belligerent whom they accompany, take the necessary measures so that their characteristic painting should be sufficiently plain.*

ART. 6.—[Neutral merchantmen, yachts, or vessels, having, or taking, on board, sick, wounded, or shipwrecked of the belligerents, cannot be captured for so doing, but they are liable to capture for any violation of neutrality they may have committed.]

*The distinguishing signs mentioned in Art. 5 can only be employed, whether in time of peace or war, to protect or indicate the ships therein referred to.*

ART. 7.—*In the case of a fight on board a warship, the sick bays shall be respected and spared as much as possible.*

*These sick bays and their appurtenances continue to be subjected to the laws of war, but cannot be diverted from their ordinary use, so long as they are required for the sick and wounded.*

*However, the commander, into whose power they are, may dispose of them, in case of serious military need, after having previously provided for the requirements of the wounded and sick on board.*

ART. 8.—*The protection due to hospital-ships and to a ship's sick bays cease if they are put to such use as help to injure the enemy.*

*The fact that the staff of these ships and sick wards is armed for maintaining order and defending the wounded or sick, as well as the fact of there being on board a wireless telegraphy apparatus, do not justify the withdrawal of protection.*

ART. 9.—*Belligerents may appeal to the zeal and charity of captains of neutral merchant vessels, yachts, or boats to embark and nurse the wounded or sick.*

*The ships that have answered this appeal, as well as those who have spontaneously rescued wounded, sick, or shipwrecked men, will enjoy a special protection and certain immunities. In no case can they be captured owing to such transport, but apart from promises that may have been made to them they remain liable to capture for all violations against neutrality they may have committed.*

ART. [7] 10.—*The religious, medical, or hospital staff of any captured ship is inviolable, and its members cannot be made prisoners of war. On leaving the ship they take with them the objects and surgical instruments which are their own private property.*

*This staff shall continue to discharge its duties while necessary, and can afterwards leave when the commander-in-chief considers it possible.*

*The belligerents must guarantee to the staff that has fallen into their hands [the enjoyment of their salaries intact] the same allowance and pay as drawn by the staff of corresponding rank in their own navy.*

ART. [8] 11.—*Sailors and soldiers, who are taken on board when sick or wounded, and all others officially attached to navies and armies, to whatever nation they belong, shall be [protected] respected and looked after by the captors.*

ART. 12.—*Every belligerent warship can claim the handing over of wounded, sick, or shipwrecked men, who are on board military, relief societies, or private hospital-ships, merchant vessels, yachts, and boats, whatever their nationality may be.*

ART. 13.—*If wounded, sick, or shipwrecked men are rescued by a neutral warship, every possible arrangement must be made*

*so that they should take no further share in the operations of the war.*

ART. [9] 14.—The shipwrecked, wounded, or sick of one of the belligerents who fall into the hands of the other are prisoners of war. The captor must decide, according to circumstances, if it is best to keep them or send them to a port of his own country, to a neutral port, or even to a hostile port. In the last case prisoners thus repatriated cannot serve as long as the war lasts.

ART. [10] 15.—The shipwrecked, wounded, or sick, who are landed at a neutral port with the consent of the local authorities must, failing a contrary arrangement between the neutral State and the belligerents, be guarded by the neutral State, so that they may not be again able to take part in the military operations.

The hospital and internment expenses shall be borne by the State to which the shipwrecked, wounded, or sick belong.

[ART. 11.—The rules contained in the above Articles are binding only on the Contracting Powers, in case of war between two or more of them.

The said rules shall cease to be binding from the time when, in a war between the Contracting Powers, one of the belligerents is joined by a non-Contracting Power.]

[ART. 12.—The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

On the receipt of each ratification a *procès-verbal* shall be drawn up, a copy of which, duly certified, shall be sent through the diplomatic channel to all the Contracting Powers.]

[ART. 13.—The Non-Signatory Powers who accepted the Geneva Convention of August 22, 1864, are allowed to adhere to the present Convention.

For this purpose they must make their adhesion known to the Contracting Powers by means of a written notification addressed to the Netherland Government, and by it communicated to all the other Contracting Powers.]

[ART. 14.—In the event of one of the High Contracting Parties denouncing the present Convention, such denunciation shall not take effect until a year after the notification made in

writing to the Netherland Government, and forthwith communicated by it to all the other Contracting Powers.

This denunciation shall only affect the notifying Power.

In faith of which the respective Plenipotentiaries have signed the present Convention and affixed their seals thereto.]

ART. 16.—*After every encounter, the two belligerents, as far as military interests permit, will take measures to look for the shipwrecked, wounded, and sick, and protect them as well as the dead against pillage and ill-treatment.*

*They shall see that the burial on land or at sea, or the cremation of the dead, is preceded by a careful examination of the corpse.*

ART. 17.—*Each belligerent shall send, as soon as possible, to the authorities of their country, navy, or army, the military marks of identity found on the dead, and a return with their names of the wounded and sick picked up by him.*

*The belligerents shall keep each other informed of internments and changes, also of admissions to hospitals and of deaths which have occurred among the wounded and sick in their power. They shall collect all articles of personal use, valuables, letters, etc., that will be found in the captured ships, or that have been left behind by the wounded and sick who died in hospital, and they shall forward them to those interested through the authorities of their country.*

ART. 18.—The dispositions of the present Convention are applicable only as between the Contracting Powers, and only if the belligerents are all parties to the Convention.

ART. 19.—*The commanders-in-chief of the belligerent fleets shall provide for the detailed execution of the above articles; they must also see to cases not covered thereby, in accordance with the instructions of their respective Governments and in keeping within the general principles of the present Convention.*

ART. 20.—*The Signatory Powers shall take all necessary measures to render their naval forces, and especially the staff*

<sup>1</sup> The corresponding article of the Convention of 1899 was as follows:—

Art. XI.—The rules contained in the above Articles are binding only on the Contracting Powers, in case of war between two or more of them.

The said rules shall cease to be binding from the time when, in a war between the Contracting Powers, one of the belligerents is joined by a Non-Contracting Power.

*protected thereby, familiar with the dispositions of the present Convention and to make them known to their own public.*

ART. 21.—*The Signatory Powers also pledge themselves, in case their penal laws are inadequate, to make or ask from their legislatures all necessary enactments to check in time of war individual acts of pillage or ill-treatment towards the wounded and sick, and also to penalize, as an illegal use of military marks, the unwarranted adoption of the distinguishing signs reported to in Art. 5 by ships not protected by the present Convention.*

*They will communicate through the Netherland Government to each other the enactments relating to such repression five years from the ratification of the present Convention at latest.*

ART. 22.—*In the event of warlike operations between the belligerent land and sea forces, the provisions of the present Convention will only be applicable to those forces that are on board.*

ART. 23.—*The present Convention shall be ratified as soon as possible, etc.*

ART. 25.—*The Convention of 1864 remains in force as between the Powers that signed it and that would not also ratify the present Convention.*

ART. 26.—*The present Convention will take effect, for the Powers that were a party to the first deposit of ratifications, sixty days after the date on the minute of this deposit, and, for the Powers who ratify subsequently, or who adhere, sixty days after notice of their ratification or adhesion has been received by the Netherland Government.*

ART. 27.—*In the event of one of the Contracting Powers wishing to denounce the present Convention, the denunciation will be notified in writing to the Netherland Government, which shall at once communicate a duly certified copy of the notice to all the other Contracting Powers informing them of the date on which it was received.*

*The denunciation will only be operative as regards the Power notifying it, and the year after the notice has reached the Netherland Government.*

ART. 28.—*A register kept by the Netherland Ministry for Foreign Affairs will show the date of the deposit of ratifications effected in virtue of Art. 23, Sects. 3 and 4, as well as the date*

*on which the notices of Adhesion (Art. 24, Sect. 2) or of denunciation (Art. 27, Sect. 1) were received.*

*Every Contracting Power is entitled to have access to this register, and to ask for certified extracts therefrom.*

*In faith of which, the Plenipotentiaries have affixed their signatures to the present Convention.*

Done at The Hague [July 29, 1899] October 18, 1907, etc.

### XIII.

#### **Declaration of St. Petersburg (1868).**

On the proposition of the Imperial Cabinet of Russia, an International Military Commission having assembled at St. Petersburg in order to examine into the expediency of forbidding the use of certain projectiles in times of war between civilized nations, and that Commission, having by common agreement fixed the technical limits at which the necessities of war ought to yield to the requirements of humanity, the undersigned are authorized by the orders of their Governments to declare as follows:

Considering that the progress of civilization should have the effect of alleviating as much as possible the calamities of war:

That the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy;

That for this purpose it is sufficient to disable the greatest possible number of men;

That this object would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable;

That the employment of such arms would, therefore, be contrary to the laws of humanity;

The Contracting Parties engage mutually to renounce, in case of war among themselves, the employment by their military or naval troops of any projectile of a weight below 400 grammes, which is either explosive or charged with fulminating or inflammable substances.



They will invite all the States which have not taken part in the deliberations of the International Military Commission assembled at St. Petersburg, by sending Delegates thereto, to accede to the present engagement.

This engagement is obligatory only upon the Contracting or Acceding Parties thereto, in case of war between two or more of themselves; it is not applicable with regard to Non-Contracting Parties, or Parties who shall not have acceded to it.

It will also cease to be obligatory from the moment when, in a war between Contracting or Acceding Parties, a Non-Contracting Party or a Non-Acceding Party shall join one of the belligerents.

The Contracting or Acceding Parties reserve to themselves to come hereafter to an understanding whenever a precise proposition shall be drawn up in view of future improvements which science may effect in the armament of troops, in order to maintain the principles which they have established, and to conciliate the necessities of war with the laws of humanity.

Done at St. Petersburg [November 29], December 11, 1868.

Signed by the Plenipotentiaries of: Great Britain, Austria-Hungary, Bavaria, Belgium, Denmark, France, Greece, Italy, Netherlands, Persia, Portugal, Prussia and North German Confederation, Russia, Sweden and Norway, Switzerland, Turkey, Würtemberg. Brazil acceded in 1869.

#### XIV.

##### **Declaration relative to Projectiles Diffusing Deleterious Gases (1899).**

The undersigned, Plenipotentiaries of the Powers represented at the International Peace Conference at The Hague, duly authorized to that effect by their Governments, inspired by the sentiments which found expression in the Declaration of St. Petersburg of November 29 [December 11], 1868,

Declare that—

The Contracting Powers agree to abstain from the use of

projectiles the object of which is the diffusion of asphyxiating or deleterious gases.

The present Declaration is only binding on the Contracting Powers in the case of a war between two or more of them.

It shall cease to be binding from the time when, in a war between the Contracting Powers, one of the belligerents shall be joined by a Non-Contracting Power.

The present Declaration shall be ratified as soon as possible, etc.

### **XV.**

#### **Declaration relative to Expanding Bullets (1899).**

The undersigned, Plenipotentiaries of the Powers represented at the International Peace Conference at The Hague, duly authorized to that effect by their Governments, inspired by the sentiments which found expression in the Declaration of St. Petersburg of November 29 [December 11], 1868,

Declare that—

The Contracting Parties agree to abstain from the use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core, or is pierced with incisions.

The present Declaration is only binding for the Contracting Powers in the case of a war between two or more of them.

It shall cease to be binding from the time when, in a war between the Contracting Powers, one of the belligerents is joined by a Non-Contracting Power.

The present Declaration shall be ratified as soon as possible, etc.

### **XVI.**

#### **Declaration relative to Discharging Projectiles and Explosives from Balloons.**

The undersigned, Plenipotentiaries of the Powers convoked to the International Peace Conference at The Hague, duly authorized to that effect by their Governments [inspired by

the sentiments which found expression in the Declaration of St. Petersburg of November 29 (December 11)], 1868, *and desiring to renew the Declaration of The Hague of July 29, 1899, now expired,*

Declare that—

The Contracting Powers agree to prohibit, for a *period coincident with the termination of the Third Peace Conference*, the launching of projectiles and explosives from balloons, or by other new methods of a similar nature.

The present Declaration is only binding on the Contracting Powers in case of war between two or more of them.

It shall cease to be binding from the time when in a war between the Contracting Powers one of the belligerents is joined by a Non-Contracting Power.

The present Declaration shall be ratified as soon as possible, etc.

This denunciation shall only affect the notifying Power.

In witness whereof the Plenipotentiaries have affixed their signatures to this Declaration.

Done at The Hague [October 18, 1907].

## XVII.

### Declaration of London concerning the Laws of Naval War.

(Signed February 26, 1909.)

His Majesty the German Emperor, King of Prussia; the President of the United States of America; His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary; His Majesty the King of Spain; the President of the French Republic; His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India; His Majesty the King of Italy; His Majesty the Emperor of Japan; Her Majesty the Queen of the Netherlands; His Majesty the Emperor of All the Russias;

Having regard to the terms in which the British Government invited various Powers to meet in conference in order to

arrive at an agreement as to what are the generally recognized rules of International Law within the meaning of Art. 7 of the Convention of October 18, 1907, relative to the establishment of an International Prize Court;

Recognizing all the advantages which an agreement as to the said rules would, in the unfortunate event of a naval war, present, both as regards peaceful commerce, and as regards the belligerents and their diplomatic relations with neutral Governments;

Having regard to the divergence often found in the methods by which it is sought to apply in practice the general principles of International Law;

Animated by the desire to ensure henceforward a greater measure of uniformity in this respect;

Hoping that a work so important to the common welfare will meet with general approval;

Have appointed as their Plenipotentiaries—that is to say:

His Majesty the German Emperor, King of Prussia:

M. Kriege, Privy Councillor of Legation and Legal Adviser to the Department for Foreign Affairs, Member of the Permanent Court of Arbitration.

The President of the United States of America:

Rear-Admiral Charles H. Stockton, retired;

Mr. George Grafton Wilson, Professor at Brown University and Lecturer on International Law at the Naval War College and at Harvard University.

His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary:

His Excellency M. Constantin Théodore Dumba, Privy Councillor of His Imperial and Royal Apostolic Majesty Envoy Extraordinary and Minister Plenipotentiary.

His Majesty the King of Spain:

M. Gabriel Maura y Gamazo, Count de la Mortera, Member of Parliament.

The President of the French Republic:

M. Louis Renault, Professor of the Faculty of Law at Paris, Honorary Minister Plenipotentiary, Legal Adviser to the Ministry of Foreign Affairs, Member of the Institute of France, Member of the Permanent Court of Arbitration.

His Majesty the King of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, Emperor of India:

The Earl of Desart, K.C.B., King's Proctor.

His Majesty the King of Italy:

M. Guido Fusinato, Councillor of State, Member of Parliament, ex-Minister of Public Instruction, Member of the Permanent Court of Arbitration.

His Majesty the Emperor of Japan:

Baron Toshiatsu Sakamoto, Vice-Admiral, Head of the Department of Naval Instruction;

M. Enjiro Yamaza, Councillor of the Imperial Embassy at London.

Her Majesty the Queen of the Netherlands:

His Excellency Jonkheer J. A. Roëll, Aide-de-Camp to Her Majesty the Queen in Extraordinary Service, Vice-Admiral retired, ex-Minister of Marine;

Jonkheer L. H. Ruysenaers, Envoy Extraordinary and Minister Plenipotentiary, ex-Secretary-General of the Permanent Court of Arbitration.

His Majesty the Emperor of All the Russias:

Baron Taube, Doctor of Laws, Councillor to the Imperial Ministry of Foreign Affairs, Professor of International Law at the University of St. Petersburg.

Who, after having communicated their full powers, found to be in good and due form, have agreed to make the present Declaration:

#### PRELIMINARY PROVISION.

The Signatory Powers are agreed that the rules contained in the following Chapters correspond in substance with the generally recognized principles of International Law.

#### *Chapter I.—Blockade in Time of War.*

ART. 1.—A blockade must not extend beyond the ports and coasts belonging to or occupied by the enemy.

ART. 2.—In accordance with the Declaration of Paris of 1856, a blockade, in order to be binding, must be effective—

that is to say, it must be maintained by a force sufficient really to prevent access to the enemy coast-line.

ART. 3.—The question whether a blockade is effective is a question of fact.

ART. 4.—A blockade is not regarded as raised if the blockading force is temporarily withdrawn on account of stress of weather.

ART. 5.—A blockade must be applied impartially to the ships of all nations.

ART. 6.—The commander of a blockading force may give permission to a warship to enter, and subsequently to leave, a blockaded port.

ART. 7.—In circumstances of distress, acknowledged by an officer of the blockading force, a neutral vessel may enter a place under blockade and subsequently leave it, provided that she has neither discharged nor shipped any cargo there.

ART. 8.—A blockade, in order to be binding, must be declared in accordance with Art. 9, and notified in accordance with Arts. 11 and 16.

ART. 9.—A declaration of blockade is made either by the blockading Power or by the naval authorities acting in its name.

It specifies—

- (1) The date when the blockade begins;
- (2) The geographical limits of the coast-line under blockade;
- (3) The period within which neutral vessels may come out.

ART. 10.—If the operations of the blockading Power, or of the naval authorities acting in its name, do not tally with the particulars, which, in accordance with Art. 9 (1) and (2), must be inserted in the declaration of blockade, the declaration is void, and a new declaration is necessary in order to make the blockade operative.

ART. 11.—A declaration of blockade is notified—

(1) To neutral Powers, by the blockading Power by means of a communication addressed to the Governments direct, or to their representatives accredited to it;

(2) To the local authorities, by the officer commanding the blockading force. The local authorities will in turn inform the foreign consular officers at the port or on the coast-line under blockade as soon as possible.

ART. 12.—The rules as to declaration and notification of blockade apply to cases where the limits of a blockade are extended, or where a blockade is re-established after having been raised.

ART. 13.—The voluntary raising of a blockade, as also any restriction in the limits of a blockade, must be notified in the manner prescribed by Art. 11.

ART. 14.—The liability of a neutral vessel to capture for breach of blockade is contingent on her knowledge, actual or presumptive, of the blockade.

ART. 15.—Failing proof to the contrary, knowledge of the blockade is presumed if the vessel left a neutral port subsequently to the notification of the blockade to the Power to which such port belongs, provided that such notification was made in sufficient time.

ART. 16.—If a vessel approaching a blockaded port has no knowledge, actual or presumptive, of the blockade, the notification must be made to the vessel itself by an officer of one of the ships of the blockading force. This notification should be entered in the vessel's log-book, and must state the day and hour, and the geographical position of the vessel at the time.

If through the negligence of the officer commanding the blockading force no declaration of blockade has been notified to the local authorities, or, if in the declaration, as notified, no period has been mentioned within which neutral vessels may come out, a neutral vessel coming out of the blockaded port must be allowed to pass free.

ART. 17.—Neutral vessels may not be captured for breach of blockade except within the area of operations of the war-ships detailed to render the blockade effective.

ART. 18.—The blockading forces must not bar access to neutral ports or coasts.

ART. 19.—Whatever may be the ulterior destination of a vessel or of her cargo, she cannot be captured for breach of blockade, if at the moment she is on her way to a non-blockaded port.

ART. 20.—A vessel which has broken blockade outwards, or which has attempted to break blockade inwards, is liable to

capture so long as she is pursued by a ship of the blockading force. If the pursuit is abandoned, or if the blockade is raised, her capture can no longer be effected.

ART. 21.—A vessel found guilty of breach of blockade is liable to condemnation. The cargo is also condemned, unless it is proved that at the time of the shipment of the goods the shipper neither knew nor could have known of the intention to break the blockade.

### *Chapter II.—Contraband of War.*

ART. 22.—The following articles may, without notice,<sup>1</sup> be treated as contraband of war, under the name of absolute contraband:

(1) Arms of all kinds, including arms for sporting purposes, and their distinctive component parts.

(2) Projectiles, charges, and cartridges of all kinds, and their distinctive component parts.

(3) Powder and explosives specially prepared for use in war.

(4) Gun-mountings, limber boxes, limbers, military wag-gons, field forges, and their distinctive component parts.

(5) Clothing and equipment of a distinctively military character.

(6) All kinds of harness of a distinctively military character.

(7) Saddle, draught, and pack animals suitable for use in war.

(8) Articles of camp equipment, and their distinctive component parts.

(9) Armour plates.

(10) Warships, including boats, and their distinctive component parts of such a nature that they can only be used on a vessel of war.

(11) Implements and apparatus designed exclusively for the manufacture of munitions of war, for the manufacture or repair of arms, or war material for use on land or sea.

<sup>1</sup> In view of the difficulty of finding an exact equivalent in English for the expression *de plein droit*, it has been decided to translate it by the words "without notice," which represent the meaning attached to it by the draftsman, as appears from the General Report.



**ART. 23.**—Articles exclusively used for war may be added to the list of absolute contraband by a declaration, which must be notified.

Such notification must be addressed to the Governments of other Powers, or to their representatives accredited to the Power making the declaration. A notification made after the outbreak of hostilities is addressed only to neutral Powers.

**ART. 24.**—The following articles, susceptible of use in war as well as for purposes of peace, may, without notice,<sup>1</sup> be treated as contraband of war, under the name of conditional contraband:

- (1) Foodstuffs.
- (2) Forage and grain, suitable for feeding animals.
- (3) Clothing, fabrics for clothing, and boots and shoes, suitable for use in war.
- (4) Gold and silver in coin or bullion; paper money.
- (5) Vehicles of all kinds available for use in war, and their component parts.
- (6) Vessels, craft, and boats of all kinds; floating docks, parts of docks and their component parts.
- (7) Railway material, both fixed and rolling-stock, and material for telegraphs, wireless telegraphs, and telephones.
- (8) Balloons and flying machines and their distinctive component parts, together with accessories and articles recognizable as intended for use in connection with balloons and flying machines.
- (9) Fuel; lubricants.
- (10) Powder and explosives not specially prepared for use in war.
- (11) Barbed wire and implements for fixing and cutting the same.
- (12) Horseshoes and shoeing materials.
- (13) Harness and saddlery.
- (14) Field-glasses, telescopes, chronometers, and all kinds of nautical instruments.

**ART. 25.**—Articles susceptible of use in war as well as for purposes of peace, other than those enumerated in Arts. 22 and 24, may be added to the list of conditional contraband by

<sup>1</sup> See note on Art. 22.

a declaration, which must be notified in the manner provided for in the second paragraph of Art. 23.

ART. 26.—If a Power waives, so far as it is concerned, the right to treat as contraband of war an article comprised in any of the classes enumerated in Arts. 22 and 24, such intention shall be announced by a declaration, which must be notified in the manner provided for in the second paragraph of Art. 23.

ART. 27.—Articles which are not susceptible of use in war may not be declared contraband of war.

ART. 28.—The following may not be declared contraband of war:

(1) Raw cotton, wool, silk, jute, flax, hemp, and other raw materials of the textile industries, and yarns of the same.

(2) Oil seeds and nuts; copra.

(3) Rubber, resins, gums, and lacs; hops.

(4) Raw hides and horns, bones, and ivory.

(5) Natural and artificial manures, including nitrates and phosphates for agricultural purposes.

(6) Metallic ores.

(7) Earths, clays, lime, chalk, stone, including marble, bricks, slates, and tiles.

(8) Chinaware and glass.

(9) Paper and paper-making materials.

(10) Soap, paint and colours, including articles exclusively used in their manufacture, and varnish.

(11) Bleaching-powder, soda ash, caustic soda, salt cake, ammonia, sulphate of ammonia, and sulphate of copper.

(12) Agricultural, mining, textile, and printing machinery.

(13) Precious and semi-precious stones, pearls, mother-of-pearl, and coral.

(14) Clocks and watches, other than chronometers.

(15) Fashion and fancy goods.

(16) Feathers of all kinds, hairs and bristles.

(17) Articles of household furniture and decoration; office furniture and requisites.

ART. 29.—Likewise the following may not be treated as contraband of war:

(1) Articles serving exclusively to aid the sick and wounded. They can, however, in case of urgent military necessity and subject to the payment of compensation, be requisitioned, if their destination is that specified in Art. 30.

(2) Articles intended for the use of the vessel in which they are found, as well as those intended for the use of her crew and passengers during the voyage.

ART. 30.—Absolute contraband is liable to capture if it is shown to be destined to territory belonging to or occupied by the enemy, or to the armed forces of the enemy. It is immaterial whether the carriage of the goods is direct or entails transshipment or a subsequent transport by land.

ART. 31.—Proof of the destination specified in Art. 30 is complete in the following cases:

(1) When the goods are documented for discharge in an enemy port, or for delivery to the armed forces of the enemy.

(2) When the vessel is to call at enemy ports only, or when she is to touch at an enemy port or meet the armed forces of the enemy before reaching the neutral port for which the goods in question are documented.

ART. 32.—Where a vessel is carrying absolute contraband, her papers are conclusive proof as to the voyage on which she is engaged, unless she is found clearly out of the course indicated by her papers and unable to give adequate reasons to justify such deviation.

ART. 33.—Conditional contraband is liable to capture if it is shown to be destined for the use of the armed forces or of a Government department of the enemy State, unless in this latter case the circumstances show that the goods cannot in fact be used for the purposes of the war in progress. This latter exception does not apply to a consignment coming under Art. 24 (4).

ART. 34.—The destination referred to in Art. 33 is presumed to exist if the goods are consigned to enemy authorities, or to a contractor established in the enemy country who, as a matter of common knowledge, supplies articles of this kind to the enemy. A similar presumption arises if the goods are consigned to a fortified place belonging to the enemy, or other place serving as a base for the armed forces of the enemy. No

such presumption, however, arises in the case of a merchant vessel bound for one of these places if it is sought to prove that she herself is contraband.

In cases where the above presumptions do not arise the destination is presumed to be innocent.

The presumptions set up by this Article may be rebutted.

ART. 35.—Conditional contraband is not liable to capture, except when found on board a vessel bound for territory belonging to or occupied by the enemy, or for the armed forces of the enemy, and when it is not to be discharged in an intervening neutral port.

The ship's papers are conclusive proof both as to the voyage on which the vessel is engaged and as to the port of discharge of the goods, unless she is found clearly out of the course indicated by her papers, and unable to give adequate reasons to justify such deviation.

ART. 36.—Notwithstanding the provisions of Art. 35, conditional contraband, if shown to have the destination referred to in Art. 33, is liable to capture in cases where the enemy country has no seaboard.

ART. 37.—A vessel carrying goods liable to capture as absolute or conditional contraband may be captured on the high seas or in the territorial waters of the belligerents throughout the whole of her voyage, even if she is to touch at a port of call before reaching the hostile destination.

ART. 38.—A vessel may not be captured on the ground that she has carried contraband on a previous occasion if such carriage is in point of fact at an end.

ART. 39.—Contraband goods are liable to condemnation.

ART. 40.—A vessel carrying contraband may be condemned if the contraband, reckoned either by value, weight, volume, or freight, forms more than half the cargo.

ART. 41.—If a vessel carrying contraband is released, she may be condemned to pay the costs and expenses incurred by the captor in respect of the proceedings in the national Prize Court, and the custody of the ship and cargo during the proceedings.

ART. 42.—Goods which belong to the owner of the contraband and are on board the same vessel are liable to condemnation.

ART. 43.—If a vessel is encountered at sea while unaware of the outbreak of hostilities or of the declaration of contraband which applies to her cargo, the contraband cannot be condemned except on payment of compensation; the vessel herself and the remainder of the cargo are not liable to condemnation or to the costs and expenses referred to in Art. 41. The same rule applies if the master after becoming aware of the outbreak of hostilities, or of the declaration of contraband, has had no opportunity of discharging the contraband.

A vessel is deemed to be aware of the existence of a state of war, or of a declaration of contraband, if she left a neutral port subsequently to the notification to the Power to which such port belongs of the outbreak of hostilities or of the declaration of contraband respectively, provided that such notification was made in sufficient time. A vessel is also deemed to be aware of the existence of a state of war if she left an enemy port after the outbreak of hostilities.

ART. 44.—A vessel which has been stopped on the ground that she is carrying contraband, and which is not liable to condemnation on account of the proportion of contraband on board, may, when the circumstances permit, be allowed to continue her voyage if the master is willing to hand over the contraband to the belligerent warship.

The delivery of the contraband must be entered by the captor on the logbook of the vessel stopped, and the master must give the captor duly certified copies of all relevant papers.

The captor is at liberty to destroy the contraband that has been handed over to him under these conditions.

### *Chapter III.—Unneutral Service.*

ART. 45.—A neutral vessel will be condemned and will, in a general way, receive the same treatment as a neutral vessel liable to condemnation for carriage of contraband:

(1) If she is on a voyage specially undertaken with a view to the transport of individual passengers who are embodied in the armed forces of the enemy, or with a view to the transmission of intelligence in the interests of the enemy.

(2) If, to the knowledge of either the owner, the charterer, or the master, she is transporting a military detachment of

the enemy, or one or more persons who, in the course of the voyage, directly assist the operations of the enemy.

In the cases specified under the above heads, goods belonging to the owner of the vessel are likewise liable to condemnation.

The provisions of the present Article do not apply if the vessel is encountered at sea while unaware of the outbreak of hostilities, or if the master, after becoming aware of the outbreak of hostilities, has had no opportunity of disembarking the passengers. The vessel is deemed to be aware of the existence of a state of war if she left an enemy port subsequently to the outbreak of hostilities, or a neutral port subsequently to the notification of the outbreak of hostilities to the Power to which such port belongs, provided that such notification was made in sufficient time.

ART. 46.—A neutral vessel will be condemned, and in a general way, receive the same treatment as would be applicable to her if she were an enemy merchant vessel:

- (1) If she takes a direct part in the hostilities;
- (2) If she is under the orders or control of an agent placed on board by the enemy Government;
- (3) If she is in the exclusive employment of the enemy Government;
- (4) If she is exclusively engaged at the time either in the transport of enemy troops or in the transmission of intelligence in the interest of the enemy.

In the cases covered by the present Article, goods belonging to the owner of the vessel are likewise liable to condemnation.

ART. 47.—Any individual embodied in the armed forces of the enemy who is found on board a neutral merchant vessel, may be made a prisoner of war, even though there be no ground for the capture of the vessel.

#### *Chapter IV.—Destruction of Neutral Prizes.*

ART. 48.—A neutral vessel which has been captured may not be destroyed by the captor; she must be taken into such port as is proper for the determination there of all questions concerning the validity of the capture.

ART. 49.—As an exception, a neutral vessel which has been captured by a belligerent warship, and which would be liable to condemnation, may be destroyed if the observance of Art. 48 would involve danger to the safety of the warship or to the success of the operations in which she is engaged at the time.

ART. 50.—Before the vessel is destroyed all persons on board must be placed in safety, and all the ship's papers and other documents which the parties interested consider relevant for the purpose of deciding on the validity of the capture must be taken on board the warship.

ART. 51.—A captor who has destroyed a neutral vessel must, prior to any decision respecting the validity of the prize, establish that he only acted in the face of an exceptional necessity of the nature contemplated in Art. 49. If he fails to do this, he must compensate the parties interested and no examination shall be made of the question whether the capture was valid or not.

ART. 52.—If the capture of a neutral vessel is subsequently held to be invalid, though the act of destruction has been held to have been justifiable, the captor must pay compensation to the parties interested, in place of the restitution to which they would have been entitled.

ART. 53.—If neutral goods not liable to condemnation have been destroyed with the vessel, the owner of such goods is entitled to compensation.

ART. 54.—The captor has the right to demand the handing over, or to proceed himself to the destruction of, any goods liable to condemnation found on board a vessel not herself liable to condemnation, provided that the circumstances are such as would, under Art. 49, justify the destruction of a vessel herself liable to condemnation. The captor must enter the goods surrendered or destroyed in the logbook of the vessel stopped, and must obtain duly certified copies of all relevant papers. When the goods have been handed over or destroyed, and the formalities duly carried out, the master must be allowed to continue his voyage.

The provisions of Arts. 51 and 52 respecting the obligations of a captor who has destroyed a neutral vessel are applicable.

*Chapter V.—Transfer to a Neutral Flag.*

ART. 55.—The transfer of an enemy vessel to a neutral flag, effected before the outbreak of hostilities is valid, unless it is proved that such transfer was made in order to evade the consequences to which an enemy vessel, as such, is exposed. There is, however, a presumption, if the bill of sale is not on board a vessel which has lost her belligerent nationality less than sixty days before the outbreak of hostilities, that the transfer is void. This presumption may be rebutted.

Where the transfer was effected more than thirty days before the outbreak of hostilities, there is an absolute presumption that it is valid if it is unconditional, complete, and in conformity with the laws of the countries concerned, and if its effect is such that neither the control of, nor the profits arising from the employment of, the vessel remain in the same hands as before the transfer. If, however, the vessel lost her belligerent nationality less than sixty days before the outbreak of hostilities and if the bill of sale is not on board, the capture of the vessel gives no right to damages.

ART. 56.—The transfer of an enemy vessel to a neutral flag, effected after the outbreak of hostilities, is void unless it is proved that such transfer was not made in order to evade the consequences to which an enemy vessel, as such, is exposed.

There, however, is an absolute presumption that a transfer is void—

(1) If the transfer has been made during a voyage or in a blockaded port.

(2) If a right to repurchase or recover the vessel is reserved to the vendor.

(3) If the requirements of the municipal law governing the right to fly the flag under which the vessel is sailing, have not been fulfilled.

*Chapter VI.—Enemy Character.*

ART. 57.—Subject to the provisions respecting transfer to another flag, the neutral or enemy character of a vessel is determined by the flag which she is entitled to fly.

The case where a neutral vessel is engaged in a trade which



is closed in time of peace, remains outside the scope of, and is in no wise affected by, this rule.

ART. 58.—The neutral or enemy character of goods found on board an enemy vessel is determined by the neutral or enemy character of the owner.

ART. 59.—In the absence of proof of the neutral character of goods found on board an enemy vessel, they are presumed to be enemy goods.

ART. 60.—Enemy goods on board an enemy vessel retain their enemy character until they reach their destination, notwithstanding any transfer effected after the outbreak of hostilities while the goods are being forwarded.

If, however, prior to the capture, a former neutral owner exercises, on the bankruptcy of an existing enemy owner, a recognized legal right to recover the goods, they regain their neutral character.

#### *Chapter VII.—Convoy.*

ART. 61.—Neutral vessels under national convoy are exempt from search. The commander of a convoy gives, in writing, at the request of the commander of a belligerent warship, all information as to the character of the vessels and their cargoes, which could be obtained by search.

ART. 62.—If the commander of the belligerent warship has reason to suspect that the confidence of the commander of the convoy has been abused, he communicates his suspicions to him. In such a case it is for the commander of the convoy alone to investigate the matter. He must record the result of such investigation in a report, of which a copy is handed to the officer of the warship. If, in the opinion of the commander of the convoy, the facts shown in the report justify the capture of one or more vessels, the protection of the convoy must be withdrawn from such vessels.

#### *Chapter VIII.—Resistance to Search.*

ART. 63.—Forcible resistance to the legitimate exercise of the right of stoppage, search, and capture, involves in all cases the condemnation of the vessel. The cargo is liable to the

same treatment as the cargo of an enemy vessel. Goods belonging to the master or owner of the vessel are treated as enemy goods.

*Chapter IX.—Compensation.*

ART. 64.—If the capture of a vessel or of goods is not upheld by the Prize Court, or if the prize is released without any judgment being given, the parties interested have the right to compensation, unless there were good reasons for capturing the vessel or goods.

FINAL PROVISIONS.

ART. 65.—The provisions of the present Declaration must be treated as a whole, and cannot be separated.

ART. 66.—The Signatory Powers undertake to ensure the mutual observance of the rules contained in the present Declaration in any war in which all the belligerents are parties thereto. They will therefore issue the necessary instructions to their authorities and to their armed forces, and will take such measures as may be required in order to ensure that it will be applied by their courts, and more particularly by their Prize Courts.

ART. 67.—The present Declaration shall be ratified as soon as possible.

The ratifications shall be deposited in London.

The first deposit of ratifications shall be recorded in a Protocol signed by the Representatives of the Powers taking part therein, and by His Britannic Majesty's Principal Secretary of State for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification addressed to the British Government, and accompanied by the instrument of ratification.

A duly certified copy of the Protocol relating to the first deposit of ratifications, and of the notifications mentioned in the preceding paragraph, as well as of the instruments of ratification which accompany them, shall be immediately sent by the British Government, through the diplomatic channel, to the Signatory Powers. The said Government shall, in the

cases contemplated in the preceding paragraph, inform them at the same time of the date on which it received the notification.

ART. 68.—The present Declaration shall take effect, in the case of the Powers which were parties to the first deposit of ratifications, sixty days after the date of the Protocol recording such deposit, and, in the case of the Powers which shall ratify subsequently, sixty days after the notification of their ratification shall have been received by the British Government.

ART. 69.—In the event of one of the Signatory Powers wishing to denounce the present Declaration, such denunciation can only be made to take effect at the end of a period of twelve years, beginning sixty days after the first deposit of ratifications, and, after that time, at the end of successive periods of six years, of which the first will begin at the end of the period of twelve years.

Such denunciation must be notified in writing, at least one year in advance, to the British Government, which shall inform all the other Powers.

It will only operate in respect of the denouncing Power.

ART. 70.—The Powers represented at the London Naval Conference attach particular importance to the general recognition of the rules which they have adopted, and therefore express the hope that the Powers which were not represented there will accede to the present Declaration. They request the British Government to invite them to do so.

A Power which desires to accede shall notify its intention in writing to the British Government, and transmit simultaneously the act of accession, which will be deposited in the archives of the said Government.

The said Government shall forthwith transmit to all the other Powers a duly certified copy of the notification, together with the act of accession, and communicate the date on which such notification was received. The accession takes effect sixty days after such date.

In respect of all matters concerning this Declaration, acceding Powers shall be on the same footing as the Signatory Powers.

ART. 71.—The present Declaration, which bears the date of

the 26th February, 1909, may be signed in London up till the 30th June, 1909, by the Plenipotentiaries of the Powers represented at the Naval Conference.

In faith whereof the Plenipotentiaries have signed the present Declaration, and have thereto affixed their seals.

Done at London, the twenty-sixth day of February, one thousand nine hundred and nine, in a single original, which shall remain deposited in the archives of the British Government, and of which duly certified copies shall be sent through the diplomatic channel to the Powers represented at the Naval Conference.

*[Here follow the signatures.]*

### XVIII.

#### **Declaration of London.**

ORDER IN COUNCIL (AUGUST 20, 1914).

At the Court at *Buckingham Palace*, the 20th day of *August*, 1914.

PRESENT,

The KING'S Most Excellent Majesty in Council.

WHEREAS during the present hostilities the Naval Forces of His Majesty will co-operate with the French and Russian Naval Forces, and

Whereas it is desirable that the naval operations of the allied forces so far as they affect neutral ships and commerce should be conducted on similar principles, and

Whereas the Governments of France and Russia have informed His Majesty's Government that during the present hostilities it is their intention to act in accordance with the provisions of the Convention known as the Declaration of London, signed on the 26th day of February, 1909, so far as may be practicable.

Now, therefore, His Majesty, by and with the advice of His Privy Council, is pleased to order, and it is hereby ordered, that during the present hostilities the Convention known as the

Declaration of London shall, subject to the following additions and modifications, be adopted and put in force by His Majesty's Government as if the same had been ratified by His Majesty:—

The additions and modifications are as follows:—

1. The lists of absolute and conditional contraband contained in the Proclamation dated August 4th, 1914, shall be substituted for the lists contained in Articles 22 and 24 of the said Declaration.

2. A neutral vessel which succeeded in carrying contraband to the enemy with false papers may be detained for having carried such contraband if she is encountered before she has completed her return voyage.

3. The destination referred to in Article 33 may be inferred from any sufficient evidence, and (in addition to the presumption laid down in Article 34) shall be presumed to exist if the goods are consigned to or for an agent of the Enemy State or to or for a merchant or other person under the control of the authorities of the Enemy State.

4. The existence of a blockade shall be presumed to be known—

(a) to all ships which sailed from or touched at an enemy port a sufficient time after the notification of the blockade to the local authorities to have enabled the enemy Government to make known the existence of the blockade;

(b) to all ships which sailed from or touched at a British or allied port after the publication of the declaration of blockade.

5. Notwithstanding the provisions of Article 35 of the said Declaration, conditional contraband, if shown to have the destination referred to in Article 33, is liable to capture to whatever port the vessel is bound and at whatever port the cargo is to be discharged.

6. The General Report of the Drafting Committee on the said Declaration presented to the Naval Conference, and adopted by the Conference at the eleventh plenary meeting on February 25th, 1909, shall be considered by all Prize Courts as an authoritative statement of the meaning and intention of the said Declaration, and such Courts shall construe and

interpret the provisions of the said Declaration by the light of the commentary given therein.

And the Lords Commissioners of His Majesty's Treasury, the Lords Commissioners of the Admiralty, and each of His Majesty's Principal Secretaries of State, the President of the Probate, Divorce and Admiralty Division of the High Court of Justice, all other Judges of His Majesty's Prize Courts, and all Governors, Officers and Authorities whom it may concern, are to give the necessary directions herein as to them may respectively appertain.

ALMERIC FITZROY.

### **XIX.**

#### **Contraband of War.**

PROCLAMATION (AUGUST 4, 1914).

By THE KING.

#### **A PROCLAMATION**

SPECIFYING THE ARTICLES TO BE TREATED AS CONTRA-  
BAND OF WAR.

GEORGE R.I.

WHEREAS a state of War exists between Us on the one hand and the German Empire on the other:

AND WHEREAS it is necessary to specify the articles which it is Our intention to treat as Contraband of War:

Now, THEREFORE, We do hereby Declare, by and with the advice of Our Privy Council, that during the continuance of the War or until We do give further public notice the articles enumerated in Schedule I. hereto will be treated as absolute contraband, and the articles enumerated in Schedule II. hereto will be treated as conditional contraband:—

#### **SCHEDULE I.**

The following articles will be treated as absolute contraband:—

1. Arms of all kinds, including arms for sporting purposes, and their distinctive component parts.

2. Projectiles, charges, and cartridges of all kinds, and their distinctive component parts.
3. Powder and explosives specially prepared for use in war.
4. Gun mountings, limber boxes, limbers, military waggons, field forges, and their distinctive component parts.
5. Clothing and equipment of a distinctively military character.
6. All kinds of harness of a distinctively military character.
7. Saddle, draught, and pack animals suitable for use in war.
8. Articles of camp equipment, and their distinctive component parts.
9. Armour plates.
10. Warships, including boats, and their distinctive component parts of such a nature that they can only be used on a vessel of war.
11. Aeroplanes, airships, balloons, and aircraft of all kinds, and their component parts, together with accessories and articles recognizable as intended for use in connection with balloons and aircraft.
12. Implements and apparatus designed exclusively for the manufacture of munitions of war, for the manufacture or repair of arms, or war material for use on land and sea.

#### SCHEDULE II.

The following articles will be treated as conditional contraband :—

1. Food-stuffs.
2. Forage and grain, suitable for feeding animals.
3. Clothing, fabrics for clothing, and boots and shoes, suitable for use in war.
4. Gold and silver in coin or bullion: paper money.
5. Vehicles of all kinds available for use in war, and their component parts.
6. Vessels, craft and boats of all kinds; floating docks, parts of docks, and their component parts.
7. Railway material, both fixed and rolling stock, and materials for telegraphs, wireless telegraphs, and telephones.
8. Fuel; lubricants.

9. Powder and explosives not specially prepared for use in war.

10. Barbed wire, and implements for fixing and cutting the same.

11. Horseshoes and shoeing materials.

12. Harness and saddlery.

13. Field-glasses, telescopes, chronometers, and all kinds of nautical instruments.

Given at Our Court at *Buckingham Palace*, this Fourth day of August, in the year of our Lord, one thousand nine hundred and fourteen, and in the Fifth year of Our Reign.

**GOD SAVE THE KING.**

**XX.**

**Contraband of War.**

**PROCLAMATION (AUGUST 5, 1914).**

**By THE KING.**

**A PROCLAMATION**

**PROHIBITING BRITISH VESSELS FROM CARRYING CONTRABAND FROM ONE FOREIGN PORT TO ANY OTHER FOREIGN PORT.**

**GEORGE R.I.**

WHEREAS a state of War exists between Us on the one hand and the German Empire on the other:

AND WHEREAS We have by Proclamation warned all persons resident, carrying on business, or being, in Our Dominions, that it is contrary to law for them to have any commercial intercourse with any person resident, carrying on business, or being in the said Empire, or to trade in or carry any goods, wares, or merchandise destined for or coming from the said Empire, or for or from any person resident, carrying on business, or being therein:

Now We do hereby further warn all Our subjects that conformably with that prohibition it is forbidden to carry in British



Vessels from any Foreign Port to any other Foreign Port any article comprised in the list of contraband of war issued by Us unless the shipowner shall have first satisfied himself that the articles are not intended ultimately for use in the enemy country. Any British Vessel acting in contravention of this Proclamation will be liable to capture by Our Naval Forces and to be taken before Our Prize Courts for adjudication, and any of Our subjects acting in contravention of this Proclamation will be liable to such penalties as the law prescribes.

Given at Our Court at *Buckingham Palace*, this Fifth day of August, in the year of our Lord one thousand nine hundred and fourteen, and in the Fifth year of Our Reign.

GOD SAVE THE KING.

## XXI.

### Naval Prize Act, 1864.

#### AN ACT FOR REGULATING NAVAL PRIZE OF WAR.

(JUNE 23, 1864).

WHEREAS it is expedient to enact permanently, with Amendments, such Provisions concerning Naval Prize, and Matters connected therewith, as have heretofore been usually passed at the Beginning of a War:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

#### *Preliminary.*

1. This Act may be cited as the Naval Prize Act, 1864.
2. In this Act—

The Term "the Lords of the Admiralty" means the Lord High Admiral of the United Kingdom, or the Commissioners for executing the Office of Lord High Admiral:

The Term " the High Court of Admiralty " means the High Court of Admiralty of *England* :

The Term " any of Her Majesty's Ships of War " includes any of Her Majesty's Vessels of War, and any hired armed Ship or Vessel in Her Majesty's service:

The Term " Officers and Crew " includes Flag Officers, Commanders, and other Officers, Engineers, Seamen, Marines, Soldiers, and others on board any of Her Majesty's Ships of War:

The Term " Ship " includes Vessel and Boat with the Tackle, Furniture, and Apparel of the Ship, Vessel, or Boat:

The Term " Ship Papers " includes all Books, Passes, Sea-Briefs, Charter-Parties, Bills of Lading, Cockets, Letters, and other Documents and Writings delivered up or found on board a captured Ship:

The Term " Goods " includes all such Things as are by the Course of Admiralty and Law of Nations the Subject of Adjudication as Prize (other than Ships).

#### I.—PRIZE COURTS.

3. The High Court of Admiralty, and every Court of Admiralty or of Vice-Admiralty, or other Court exercising Admiralty Jurisdiction in Her Majesty's Dominions, for the Time being authorized to take cognizance of and judicially proceed in Matters of Prize, shall be a Prize Court within the Meaning of this Act.

Every such Court, other than the High Court of Admiralty, is comprised in the Term " Vice-Admiralty Prize Court," when hereafter used in this Act.

#### *High Court of Admiralty.*

4. The High Court of Admiralty shall have Jurisdiction throughout Her Majesty's Dominions as a Prize Court.

The High Court of Admiralty as a Prize Court shall have Power to enforce any Order or Decree of a Vice-Admiralty Prize Court, and any Order or Decree of the Judicial Committee of the Privy Council in a Prize Appeal.

*Appeal ; Judicial Committee.*

5. An appeal shall lie to Her Majesty in Council from any Order or Decree of a Prize Court, as of Right in case of a Final Decree, and in other Cases with the Leave of the Court making the Order or Decree.

Every Appeal shall be made in such Manner and Form and subject to such Regulations (including Regulations as to Fees, Costs, Charges, and Expenses) as may for the Time being be directed by Order in Council, and in the Absence of any such Order, or so far as any such Order does not extend, then in such Manner and Form and subject to such Regulations as are for the Time being prescribed or in force respecting Maritime Causes of Appeal.

6. The Judicial Committee of the Privy Council shall have Jurisdiction to hear and report on any such Appeal, and may therein exercise all such Powers as for the Time being appertain to them in respect of Appeals from any Court of Admiralty Jurisdiction, and all such Powers as are under this Act vested in the High Court of Admiralty, and all such Powers as were wont to be exercised by the Commissioners of Appeal in Prize Causes.

7. *All Processes and Documents required for the Purposes of any such Appeal shall be transmitted to and shall remain in the Custody of the Registrar of Her Majesty in Prize Appeals.*<sup>1</sup>

8. *In every such Appeal the usual Inhibition shall be extracted from the Registry of Her Majesty in Prize Appeals within Three Months after the Date of the Order or Decree appealed from if the Appeal be from the High Court of Admiralty, and within Six Months after that Date if it be from a Vice-Admiralty Prize Court.*

*The Judicial Committee may, nevertheless, on sufficient Cause shown, allow the Inhibition to be extracted and the Appeal to be prosecuted after the Expiration of the respective Periods aforesaid.*<sup>1</sup>

*Vice-Admiralty Prize Courts.*

9. Every Vice-Admiralty Prize Court shall enforce within its Jurisdiction all Orders and Decrees of the Judicial Com-

<sup>1</sup> Repealed by the Prize Courts Procedure Act, 1914.

mittee in Prize Appeals and of the High Court of Admiralty in Prize Causes.

10. Her Majesty in Council may grant to the Judge of any Vice-Admiralty Prize Court a Salary not exceeding Five Hundred Pounds a Year, payable out of Money provided by Parliament, subject to such Regulations as seem meet.

A Judge to whom a Salary is so granted shall not be entitled to any further emolument, arising from Fees or otherwise, in respect of Prize Business transacted in his Court.

An Account of all such Fees shall be kept by the Registrar of the Court, and the Amount thereof shall be carried to and from Part of the Consolidated Fund of the United Kingdom.

11. In accordance, as far as Circumstances admit, with the Principles and Regulations laid down in The Superannuation Act, 1859, Her Majesty in Council may grant to the Judge of any Vice-Admiralty Prize Court an annual or other Allowance, to take effect on the Termination of his Service, and to be payable out of Money provided by Parliament.

12. The Registrar of every Vice-Admiralty Prize Court shall, on the First Day of *January* and First Day of *July* in every Year, make out a Return (in such Form as the Lords of the Admiralty from Time to Time direct) of all Cases adjudged in the Court since the last half-yearly Return, and shall with all convenient Speed send the same to the Registrar of the High Court of Admiralty, who shall keep the same in the Registry of that Court, and who shall, as soon as conveniently may be, send a Copy of the Returns of each Half Year to the Lords of the Admiralty, who shall lay the same before both Houses of Parliament.

#### *General.*

13. *The Judicial Committee of the Privy Council, with the Judge of the High Court of Admiralty, may from Time to Time frame General Orders for regulating (subject to the Provisions of this Act) the Procedure and Practice of Prize Courts, and the Duties and Conduct of the Officers thereof and of the Practitioners therein, and for regulating the Fees to be taken by the Officers of*

*the Courts, and the Costs, Charges, and Expenses to be allowed to the Practitioners therein.*

*Any such General Orders shall have full Effect, if and when approved by Her Majesty in Council, but not sooner or otherwise.*

*Every Order in Council made under this Section shall be laid before both Houses of Parliament.*

*Every such Order in Council shall be kept exhibited in a conspicuous Place in each Court to which it relates.<sup>1</sup>*

14. It shall not be lawful for any Registrar, Marshal, or other Officer of any Prize Court, or for the Registrar of Her Majesty in Prize Appeals, directly or indirectly to act or be in any Manner concerned as Advocate, Proctor, Solicitor, or Agent, or otherwise, in any Prize Cause or Appeal, on pain of Dismissal or Suspension from Office, by Order of the Court or of the Judicial Committee (as the Case may require).

15. It shall not be lawful for any Proctor or Solicitor, or Person practising as a Proctor or Solicitor, being employed by a Party in a Prize Cause or Appeal, to be employed or concerned, by himself or his Partner, or by any other Person, directly or indirectly, by or on behalf of any adverse Party in that Cause or Appeal, on pain of Exclusion or Suspension from Practice in Prize Matters, by Order of the Court or of the Judicial Committee (as the Case may require).

## II.—PROCEDURE IN PRIZE CAUSES.

### *Proceedings by Captors.*

16. Every Ship taken as Prize, and brought into Port within the Jurisdiction of a Prize Court, shall forthwith, and without Bulk broken, be delivered up to the Marshal of the Court.

If there is no such Marshal, then the Ship shall be in like Manner delivered up to the principal Officer of Customs at the Port.

The Ship shall remain in the Custody of the Marshal, or of such Officer, subject to the Orders of the Court.

17. The Captors shall, with all practicable Speed after the

<sup>1</sup> Sect. 3 of the Prize Courts Act, 1894, has been substituted under that Act for this section. See p. 236.

Ship is brought into Port, bring the Ship Papers into the Registry of the Court.

The Officer in Command, or One of the Chief Officers of the capturing Ship, or some other Person who was present at the Capture, and saw the Ship Papers delivered up or found on board, shall make Oath that they are brought in as they were taken, without Fraud, Addition, Subduction, or Alteration, or else shall account on Oath to the Satisfaction of the Court for the Absence or altered Condition of the Ship Papers or any of them.

Where no Ship Papers are delivered up or found on board the captured Ship, the Officer in Command, or One of the Chief Officers of the capturing Ship, or some other Person who was present at the Capture, shall make Oath to that Effect.

18. *As soon as the Affidavit as to Ship Papers is filed, a Monition shall issue, returnable within Twenty Days from the Service thereof, citing all Persons in general to show Cause why the captured Ship should not be condemned.*<sup>1</sup>

19. *The Captors shall, with all practicable Speed after the captured Ship is brought into Port, bring Three or Four of the principal Persons belonging to the captured Ship before the Judge of the Court or some Person authorized in this Behalf, by whom they shall be examined on Oath on the Standing Interrogatories.*

*The Preparatory Examinations on the Standing Interrogatories shall, if possible, be concluded within Five Days from the Commencement thereof.*<sup>2</sup>

20. *After the Return of the Monition, the Court shall, on Production of the Preparatory Examinations and Ship Papers, proceed with all convenient Speed either to condemn or to release the captured Ship.*

21. *Where, on Production of the Preparatory Examinations and Ship Papers, it appears to the Court doubtful whether the captured Ship is good Prize or not, the Court may direct further Proof to be adduced, either by Affidavit or by Examination of*

<sup>1</sup> See Sect. 1 of the Prize Courts Procedure Act, which provides for the addition to this section of the words "Nothing in this Act shall apply to ships of war taken as prize."

<sup>2</sup> Repealed down to Sect. 29 inclusive by Prize Courts Procedure Act, 1914.

*Witnesses, with or without Pleadings, or by Production of further Documents ; and on such further Proof being adduced the Court shall with all convenient Speed proceed to Adjudication.*

*22. The foregoing Provisions, as far as they relate to the Custody of the Ship, and to Examination on the Standing Interrogatories, shall not apply to Ships of War taken as Prize.*

#### *Claim.*

*23. At any Time before Final Decree made in the Cause, any Person claiming an Interest in the Ship may enter in the Registry of the Court a Claim, verified on Oath.*

*Within Five Days after entering the Claim, the Claimant shall give Security for Costs in the Sum of Sixty Pounds ; but the Court shall have Power to enlarge the Time for giving Security, or to direct Security to be given in a larger Sum, if the Circumstances appear to require it.*

#### *Appraisement.*

*24. The Court may, if it thinks fit, at any Time direct that the captured Ship be appraised.*

*Every Appraisement shall be made by competent Persons sworn to make the same according to the best of their Skill and Knowledge.*

#### *Delivery on Bail.*

*25. After Appraisement, the Court may, if it thinks fit, direct that the captured Ship be delivered up to the Claimant, on his giving Security to the Satisfaction of the Court to pay to the Captors the appraised Value thereof in case of Condemnation.*

#### *Sale.*

*26. The Court may at any Time, if it thinks fit, on account of the Condition of the captured Ship, or on the Application of a Claimant, order that the captured Ship be appraised as aforesaid (if not already appraised), and be sold.*

*27. On and after Condemnation the Court may, if it thinks fit, order that the Ship be appraised as aforesaid (if not already appraised), and be sold.*

28. Every Sale shall be made by or under the Superintendence of the Marshal of the Court or of the Officer having the Custody of the captured Ship.

29. The Proceeds of any Sale, made either before or after Condemnation, and after Condemnation the appraised Value of the captured Ship, in case she has been delivered up to a Claimant on Bail, shall be paid under an Order of the Court either into the Bank of England to the Credit of Her Majesty's Paymaster General, or into the Hands of an Official Accountant (belonging to the Commissariat or some other Department) appointed for this Purpose by the Commissioners of Her Majesty's Treasury or by the Lords of the Admiralty, subject in either Case to such Regulations as may from Time to Time be made, by Order in Council, as to the Custody and Disposal of Money so paid.

#### *Small Armed Ships.*

30. The Captors may include in One Adjudication any Number, not exceeding Six, of armed Ships not exceeding One hundred Tons each, taken within Three Months next before Institution of Proceedings.

#### *Goods.*

31. The foregoing Provisions relating to Ships shall extend and apply, *mutatis mutandis*, to Goods taken as Prize on board Ship; and the Court may direct such Goods to be unladen, inventoried, and warehoused.

#### *Monition to Captors to proceed.*

32. If the Captors fail to institute or to prosecute with Effect Proceedings for Adjudication, a Monition shall, on the Application of a Claimant, issue against the Captors, returnable within Six Days from the Service thereof, citing them to appear and proceed to Adjudication; and on the Return thereof the Court shall either forthwith proceed to Adjudication or direct further Proof to be adduced as aforesaid, and then proceed to Adjudication.<sup>1</sup>

<sup>1</sup> Repealed by the Prize Courts Procedure Act, 1914.



*Claim on Appeal.*

33. *Where any Person, not an original Party in the Cause, intervenes on Appeal, he shall enter a Claim, verified on Oath, and shall give Security for Costs.*<sup>1</sup>

## III.—SPECIAL CASES OF CAPTURE.

*Land Expeditions.*

34. Where, in an Expedition of any of Her Majesty's Naval or Naval and Military Forces against a Fortress or Possession on Land, Goods belonging to the State of the Enemy or to a Public Trading Company of the Enemy exercising Powers of Government are taken in the Fortress or Possession, or a Ship is taken in Waters defended by or belonging to the Fortress or Possession, a Prize Court shall have Jurisdiction as to the Goods or Ship so taken, and any Goods taken on board the Ship, as in case of Prize.

*Conjunct Capture with Ally.*

35. Where any Ship or Goods is or are taken by any of Her Majesty's Naval or Naval and Military Forces while acting in conjunction with any Forces of any of Her Majesty's Allies, a Prize Court shall have Jurisdiction as to the same as in case of Prize, and shall have Power, after Condemnation, to apportion the due Share of the Proceeds to Her Majesty's Ally, the proportionate Amount and the Disposition of which Share shall be such as may from Time to Time be agreed between Her Majesty and Her Majesty's Ally.

*Joint Capture.*

36. *Before Condemnation, a Petition on behalf of asserted joint Captors shall not (except by special Leave of the Court) be admitted, unless and until they give Security to the Satisfaction of the Court to contribute to the actual Captors a just Proportion of any Costs, Charges, or Expenses or Damages that may be incurred by or awarded against the actual Captors on account of the Capture and Detention of the Prize.*

<sup>1</sup> Repealed by the Prize Courts Procedure Act, 1914.

*After Condemnation, such a Petition shall not (except by special Leave of the Court) be admitted unless and until the asserted joint Captors pay to the actual Captors a just Proportion of the Costs, Charges, and Expenses incurred by the actual Captors in the Case, and give such Security as aforesaid, and show sufficient Cause to the Court why their Petition was not presented before Condemnation.*

*Provided, that nothing in the present Section shall extend to the asserted Interest of a Flag Officer claiming to share by virtue of his Flag.<sup>1</sup>*

*Offences against Law of Prize.*

37. A Prize Court, on Proof of any Offence against the Law of Nations, or against this Act, or any Act relating to Naval Discipline, or against any Order in Council or Royal Proclamation, or of any Breach of Her Majesty's Instructions relating to Prize, or of any Act of Disobedience to the Orders of the Lords of the Admiralty, or to the Command of a Superior Officer, committed by the Captors in relation to any Ship or Goods taken as Prize, or in relation to any Person on board any such Ship, may, on Condemnation, reserve the Prize to Her Majesty's Disposal, notwithstanding any Grant that may have been made by Her Majesty in favour of Captors.

*Pre-emption.*

38. Where a Ship of a Foreign Nation passing the Seas laden with Naval or Victualling Stores intended to be carried to a Port of any Enemy of Her Majesty is taken and brought into a Port of the United Kingdom, and the Purchase for the Service of Her Majesty of the Stores on board the Ship appears to the Lords of the Admiralty expedient without the Condemnation thereof in a Prize Court, in that Case the Lords of the Admiralty may purchase, on the Account or for the Service of Her Majesty, all or any of the Stores on board the Ship; and the Commissioners of Customs may permit the Stores purchased to be entered and landed within any Port.

<sup>1</sup> Repealed by the Prize Courts Procedure Act, 1914.

*Capture by Ship other than a Ship of War.*

39. Any Ship or Goods taken as Prize by any of the Officers and Crew of a Ship other than a Ship of War of Her Majesty shall, on Condemnation, belong to Her Majesty in Her Office of Admiralty.

**IV.—PRIZE SALVAGE.**

40. Where any Ship or Goods belonging to any of Her Majesty's Subjects, after being taken as Prize by the Enemy, is or are retaken from the Enemy by any of Her Majesty's Ships of War, the same shall be restored by Decree of a Prize Court to the Owner, on his paying as Prize Salvage One Eighth Part of the Value of the Prize to be decreed and ascertained by the Court, or such Sum not exceeding One Eighth Part of the estimated Value of the Prize as may be agreed on between the Owner and Re-captors, and approved by Order of the Court; Provided, that where the Re-capture is made under Circumstances of special Difficulty or Danger, the Prize Court may, if it thinks fit, award to the Re-captors as Prize Salvage a larger Part than One Eighth Part, but not exceeding in any Case One Fourth Part, of the Value of the Prize.

Provided also, that where a Ship after being so taken is set forth or used by any of Her Majesty's Enemies as a Ship of War, this Provision for Restitution shall not apply, and the Ship shall be adjudicated on as in other Cases of Prize.

41. Where a Ship belonging to any of Her Majesty's Subjects, after being taken as Prize by the Enemy, is retaken from the Enemy by any of Her Majesty's Ships of War, she may, with the Consent of the Re-captors, prosecute her Voyage, and it shall not be necessary for the Re-captors to proceed to Adjudication till her Return to a Port of the United Kingdom.

The Master or Owner, or his Agent, may, with the Consent of the Re-captors, unload and dispose of the Goods on board the Ship before Adjudication.

In case the Ship does not, within Six Months, return to a Port of the United Kingdom, the Re-captors may nevertheless institute Proceedings against the Ship or Goods in the High Court of Admiralty, and the Court may thereupon award

Prize Salvage as aforesaid to the Re-captors, and may enforce Payment thereof, *either by Warrant of Arrest against the Ship or Goods, or by Monition and Attachment against the Owner.*<sup>1</sup>

V.—PRIZE BOUNTY.

42. If, in relation to any War, Her Majesty is pleased to declare, by Proclamation or Order in Council, Her Intention to grant Prize Bounty to the Officers and Crews of Her Ships of War, then such of the Officers and Crew of any of Her Majesty's Ships of War as are actually present at the taking or destroying of any armed Ship of any of Her Majesty's Enemies shall be entitled to have distributed among them as Prize Bounty a sum calculated at the Rate of Five Pounds for each Person on board the Enemy's Ship at the Beginning of the Engagement.

43. The Number of the Persons so on board the Enemy's Ship shall be proved in a Prize Court, either by the Examinations on Oath of the Survivors of them, or of any Three or more of the Survivors, or if there is no Survivor by the Papers of the Enemy's Ship, or by the Examinations on Oath of Three or more of the Officers and Crew of Her Majesty's Ship, or by such other Evidence as may seem to the Court sufficient in the Circumstances.

The Court shall make a Decree declaring the Title of the Officers and Crew of Her Majesty's Ship to the Prize Bounty, and stating the Amount thereof.

The Decree shall be subject to Appeal as other Decrees of the Court.

44. On Production of an official Copy of the Decree the Commissioners of Her Majesty's Treasury shall, out of Money provided by Parliament, pay the Amount of Prize Bounty decreed, in such Manner as any Order in Council may from Time to Time direct.

VI.—MISCELLANEOUS PROVISIONS.

*Ransom.*

45. Her Majesty in Council may from Time to Time, in relation to any War, make such Orders as may seem expedient,

<sup>1</sup> Repealed by the Prize Courts Procedure Act, 1914.

according to Circumstances, for prohibiting or allowing, wholly or in certain Cases, or subject to any Conditions or Regulations or otherwise, as may from Time to Time seem meet, the ransoming or the entering into any Contract or Agreement for the ransoming of any Ship or Goods belonging to any of Her Majesty's Subjects, and taken as Prize by any of Her Majesty's Enemies.

Any Contract or Agreement entered into, and any Bill, Bond or other Security given for Ransom of any Ship or Goods, shall be under the exclusive Jurisdiction of the High Court of Admiralty as a Prize Court (subject to Appeal to the Judicial Committee of the Privy Council), and if entered into or given in contravention of any such Order in Council shall be deemed to have been entered into or given for an illegal Consideration.

If any Person ransoms or enters into any Contract or Agreement for ransoming any Ship or Goods, in contravention of any such Order in Council, he shall for every such Offence be liable to be proceeded against in the High Court of Admiralty at the Suit of Her Majesty in Her Office of Admiralty, and on Conviction to be fined, in the Discretion of the Court, any Sum not exceeding Five hundred Pounds.

#### *Convoy.*

46. If the Master or other Person having the Command of any Ship of any of Her Majesty's Subjects, under the Convoy of any of Her Majesty's Ships of War, wilfully disobeys any lawful Signal, Instruction, or Command of the Commander of the Convoy, or without Leave deserts the Convoy, he shall be liable to be proceeded against in the High Court of Admiralty at the Suit of Her Majesty in Her Office of Admiralty, and upon Conviction to be fined, in the Discretion of the Court, any Sum not exceeding Five hundred Pounds, and to suffer Imprisonment for such Time, not exceeding One Year, as the Court may adjudge.

#### *Customs Duties and Regulations.*

47. All Ships and Goods taken as Prize and brought into a Port of the United Kingdom shall be liable to and be charged with the same Rates and Charges and Duties of Customs as

under any Act relating to the Customs may be chargeable on other Ships and Goods of the like Description; and

All Goods brought in as Prize which would on the voluntary Importation thereof be liable to Forfeiture or subject to any Restriction under the Laws relating to the Customs, shall be deemed to be so liable and subject, unless the Commissioners of Customs see fit to authorize the Sale or Delivery thereof for Home Use or Exportation, unconditionally or subject to such Conditions and Regulations as they may direct.

48. Where any Ship or Goods taken as Prize is or are brought into a Port of the United Kingdom, the Master or other Person in charge or command of the Ship which has been taken or in which the Goods are brought shall, on Arrival at such Port, bring to at the proper Place of Discharge, and shall, when required by any Officer of Customs, deliver an Account in Writing under His Hand concerning such Ship and Goods, giving such Particulars relating thereto as may be in his Power, and shall truly answer all Questions concerning such Ship or Goods asked by any such Officer, and in default shall forfeit a Sum not exceeding One hundred Pounds, such Forfeiture to be enforced as Forfeitures for Offences against the Laws relating to the Customs are enforced, and every such Ship shall be liable to such Searches as other Ships are liable to, and the Officers of the Customs may freely go on board such Ship and bring to the Queen's Warehouse any Goods on board the same, subject, nevertheless, to such Regulations in respect of Ships of War belonging to Her Majesty as shall from Time to Time be issued by the Commissioners of Her Majesty's Treasury.

49. Goods taken as Prize may be sold either for Home Consumption or for Exportation; and if in the former Case the Proceeds thereof, after Payment of Duties of Customs, are insufficient to satisfy the just and reasonable Claims thereon, the Commissioners of Her Majesty's Treasury may remit the whole or such Part of the said Duties as they see fit.

*Perjury.*

50. If any Person wilfully and corruptly swears, declares, or affirms falsely in any Prize Cause or Appeal, or in any Pro-

ceeding under this Act, or in respect of any Matter required by this Act to be verified on Oath, or suborns any other Person to do so, he shall be deemed guilty of Perjury, or of Subornation of Perjury (as the Case may be), and shall be liable to be punished accordingly.

*Limitation of Actions, etc.*

51. Any Action or Proceeding shall not lie in any Part of Her Majesty's Dominions against any Person acting under the Authority or in the Execution or intended Execution or in pursuance of this Act for any alleged Irregularity or Trespass, or other Act or Thing done or omitted by him under this Act, unless Notice in Writing (specifying the Cause of the Action or Proceeding) is given by the intending Plaintiff or Prosecutor to the intended Defendant One Month at least before the Commencement of the Action or Proceeding, nor unless the Action or Proceeding is commenced within Six Months next after the Act or Thing complained of is done or omitted, or, in case of a Continuation of Damage, within Six Months next after the doing of such Damage has ceased.

In any such Action the Defendant may plead generally that the Act or Thing complained of was done or omitted by him when acting under the Authority or in the Execution or intended Execution or in pursuance of this Act, and may give all special Matter in Evidence; and the Plaintiff shall not succeed if Tender of sufficient Amends is made by the Defendant before the Commencement of the Action; and in case no Tender has been made, the Defendant may, by Leave of the Court in which the Action is brought, at any Time pay into Court such Sum of Money as he thinks fit, whereupon such Proceeding and Order shall be had and made in and by the Court as may be had and made on the Payment of Money into Court in an ordinary Action; and if the Plaintiff does not succeed in the Action, the Defendant shall receive such full and reasonable Indemnity as to all Costs, Charges, and Expenses incurred in and about the Action as may be taxed and allowed by the proper Officer, subject to Review; and though a Verdict is given for the Plaintiff in the Action he shall not

have Costs against the Defendant, unless the Judge before whom the Trial is had certifies his Approval of the Action.

Any such Action or Proceeding against any Person in Her Majesty's Naval Service, or in the Employment of the Lords of the Admiralty, shall not be brought or instituted elsewhere than in the United Kingdom.

*Petitions of Right.*

52. A Petition of Right, under The Petitions of Right Act, 1860, may, if the Suppliant thinks fit, be intituled in the High Court of Admiralty, in case the Subject Matter of the Petition or any material Part thereof arises out of the Exercise of any Belligerent Right on behalf of the Crown, or would be cognizable in a Prize Court within Her Majesty's Dominions if the same were a Matter in dispute between private Persons.

Any Petition of Right under the last mentioned Act, whether intituled in the High Court of Admiralty or not, may be prosecuted in that Court, if the Lord Chancellor thinks fit so to direct.

The Provisions of this Act relative to Appeal, and to the framing and Approval of General Orders for regulating the Procedure and Practice of the High Court of Admiralty, shall extend to the Case of any such Petition of Right intituled or directed to be prosecuted in that Court; and, subject thereto, all the Provisions of the Petitions of Right Act, 1860, shall apply, *mutatis mutandis*, in the Case of any such Petition of Right; and for the Purposes of the present Section the Terms "Court" and "Judge" in that Act shall respectively be understood to include and to mean the High Court of Admiralty and the Judge thereof, and other Terms shall have the respective Meanings given to them in that Act.

*Orders in Council.*

53. Her Majesty in Council may from Time to Time make such Orders in Council as seem meet for the better Execution of this Act.

54. Every Order in Council under this Act shall be published in the *London Gazette*, and shall be laid before both



Houses of Parliament within Thirty Days after the making thereof, if Parliament is then sitting, and, if not, then within Thirty Days after the next Meeting of Parliament.

*Savings.*

55. Nothing in this Act shall—

- (1) give to the Officers and Crew of any of Her Majesty's Ships of War any Right or Claim in or to any Ship or Goods taken as Prize or the Proceeds thereof, it being the Intent of this Act that such Officers and Crews shall continue to take only such Interest (if any) in the Proceeds of Prizes as may be from Time to Time granted to them by the Crown; or
- (2) affect the Operation of any existing Treaty or Convention with any Foreign Power; or
- (3) take away or abridge the Power of the Crown to enter into any Treaty or Convention with any Foreign Power containing any Stipulation that may seem meet concerning any Matter to which this Act relates; or
- (4) take away, abridge, or control, further or otherwise than as expressly provided by this Act, any Right, Power, or Prerogative of Her Majesty the Queen in right of Her Crown, or in right of Her Office of Admiralty, or any Right or Power of the Lord High Admiral of the United Kingdom, or of the Commissioners for executing the Office of Lord High Admiral; or
- (5) take away, abridge, or control, further or otherwise than as expressly provided by this Act, the Jurisdiction or Authority of a Prize Court to take cognizance of and judicially proceed upon any Capture, Seizure, Prize, or Reprisal of any Ship or Goods, and to hear and determine the same, and, according to the Course of Admiralty and the Law of Nations, to ad-

judge and condemn any Ship or Goods, or any other Jurisdiction or Authority of or exercisable by a Prize Court.

*Commencement.*

56. This Act shall commence on the Commencement of The Naval Agency and Distribution Act, 1864.

XXII.

**Prize Courts Act, 1894.**

AN ACT TO MAKE FURTHER PROVISION FOR THE ESTABLISHMENT OF PRIZE COURTS, AND FOR OTHER PURPOSES CONNECTED THEREWITH (AUGUST 17, 1894).

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Prize Courts Act, 1894.

2. (1) Any commission, warrant, or instructions from Her Majesty the Queen or the Admiralty for the purpose of commissioning or regulating the procedure of a prize court at any place in a British possession may, notwithstanding the existence of peace, be issued at any time, with a direction that the court shall act only upon such proclamation as herein-after mentioned being made in the possession.

(2) Where any such commission, warrant, or instructions have been issued, then, subject to instructions from Her Majesty, the Vice-Admiral of such possession may, when satisfied by information from a Secretary of State or otherwise, that war has broken out between Her Majesty and any foreign State, proclaim that war has so broken out, and thereupon the said commission, warrant, and instructions shall take effect as if the same had been issued after the breaking out of such war and such foreign State were named therein.

(3) The said commission and warrant may authorize either a Vice-Admiralty Court or a Colonial Court of Admiralty,

within the meaning of the Colonial Courts of Admiralty Act, 1890, to act as a prize court, and may establish a Vice-Admiralty Court for that purpose.

(4) Any such commission, warrant, or instructions may be revoked or altered from time to time.

(5) A court duly authorized to act as a prize court during any war shall after the conclusion of the war continue so to act in relation to, and finally dispose of, all matters and things which arose during the war, including all penalties and forfeitures incurred during the war.

3. (1) Her Majesty the Queen in Council may make rules of court for regulating, subject to the provisions of the Naval Prize Act, 1864, and this Act, the procedure and practice of prize courts within the meaning of that Act, and the duties and conduct of the officers thereof, and of the practitioners therein, and for regulating the fees to be taken by the officers of the courts, and the costs, charges, and expenses to be allowed to the practitioners therein.

(2) Every rule so made shall, whenever made, take effect at the time therein mentioned, and shall be laid before both Houses of Parliament, and shall be kept exhibited in a conspicuous place in each court to which it relates.

(3) This section shall be substituted for section thirteen of the Naval Prize Act, 1864, which section is hereby repealed.

(4) If any Colonial Court of Admiralty within the meaning of the Colonial Courts of Admiralty Act, 1890, is authorized under this Act or otherwise to act as a prize court, all fees arising in respect of prize business transacted in the court shall be fixed, collected, and applied in like manner as the fees arising in respect of the Admiralty business of the court under the said Act.

4. Her Majesty the Queen in Council may make rules of court for regulating the procedure and practice, including fees and costs, in a Vice-Admiralty Court, whether under this Act or otherwise.

5. Section twenty-five of the Government of India Act, 1800, is hereby repealed.

## XXIII.

**Commissioners for Oaths (Prize Proceedings) Act, 1907.**

AN ACT FOR AMENDING THE LAW RELATING TO THE ADMINISTRATION OF OATHS FOR THE PURPOSE OF PROCEEDINGS IN PRIZE COURTS (AUGUST 28, 1907).

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. There shall be added to section four of the Commissioners for Oaths Act, 1889 (which relates to the appointment of persons to administer oaths in prize proceedings), the following provisions:—

“ Any officer for the time being holding any prescribed office on board any of His Majesty's ships, or any of His Majesty's ships of any prescribed class, shall, whilst on the high seas or out of His Majesty's Dominions, by virtue of his office, be empowered to administer oaths and take affidavits for any purpose relating to proceedings in any prize court within the meaning of the Naval Prize Act, 1864, as amended by any subsequent enactment.

“ In this section the expression ‘ prescribed ’ means prescribed in any regulations made by the Admiralty with the consent of the Lord Chancellor, and the expression ‘ His Majesty's ships ’ includes any of His Majesty's vessels of war and any hired ship or vessel in His Majesty's service.

“ Any document purporting to have subscribed thereto the signature of any person authorized by or under this section to administer an oath, in testimony of any oath or affidavit being administered or taken before him, shall be admitted in evidence without proof of the signature being the signature of that person, or of the official character of that person.”

2. This Act may be cited as the Commissioners for Oaths (Prize Proceedings) Act, 1907, and the Commissioners for Oaths Acts, 1889 and 1891, and the Commissioners for Oaths Amendment Act, 1890, and this Act may be cited together as the Commissioners for Oaths Acts, 1889 to 1907.

## XXIV.

**Prize Courts (Procedure) Act, 1914.****AN ACT TO AMEND THE LAW RELATING TO PROCEDURE IN PRIZE COURTS (AUGUST 5, 1914).**

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) As from the date when rules under an Order in Council made after the passing of this Act in pursuance of section three of the Prize Courts Act, 1894, regulating the procedure and practice in prize courts, come into operation, such of the provisions of the Naval Prize Act, 1864, as are specified in the Schedule to this Act (being enactments relating to the practice and procedure in prize courts) shall be repealed:

Provided that nothing in such repeal shall have the effect of extending section sixteen of that Act to ships of war taken as prize, and accordingly that section shall have effect as if the following words were inserted therein:—"Nothing in this section shall apply to ships of war taken as prize."

(2) Any cause or proceeding commenced in any prize court before such rules as aforesaid come into operation as respects that court may, as the court directs, be either—

- (a) recommenced and proceeded with in accordance with the said rules; or
- (b) continued in accordance with the said rules subject to such adaptations as the court may deem necessary to make them applicable to the case; or
- (c) continued to the determination thereof in accordance with the procedure applicable to the case at the commencement of the cause or proceeding.

2. This Act may be cited as the Prize Courts (Procedure) Act, 1914, and shall be construed as one with the Naval Prize Act, 1864; and that Act and the Prize Courts Act, 1894, and this Act may be cited together as the Naval Prize Acts, 1864 to 1914.

## SCHEDULE.

PROVISIONS OF NAVAL PRIZE ACT, 1864, REPEALED.

Sections 7 and 8, 18 to 29, 32, 33, and 36, and in section 41, the words "either by warrant of arrest against the ship or goods, or by monition and attachment against the owner."

## XXV.

## British Prisoners of War.

## WAR OFFICE STATEMENT.

The War Office issued the following statement on September 18, 1914:

His Majesty's Government have now received information that the German Government are prepared to communicate lists of British prisoners of war who are in their hands, in return for similar information as to German prisoners of war interned in this country. It is contemplated that such lists, which will include information as to the physical condition of the prisoners, shall be interchanged periodically.

Relatives of British officers and men who may be included in such lists will receive immediate notification of the fact. As no lists have yet been received through this channel, no information is at present available. As soon as they are received notification will be made. Meanwhile inquiries cannot be answered.

Arrangements are also being made for the transmission to Germany of letters, postcards, and postal parcels intended for British prisoners of war. Correspondence or postal parcels intended for British prisoners of war will be exempt from postage charges, and must be addressed as follows:

Captain X. or Private Y.

*Name of Unit,*

British Prisoner of War,

Prisoners of War Information Bureau,

Berlin.

In order to avoid delay in the delivery, no letters should be enclosed in parcels.

Arrangements have also been made for the issue of money orders intended for British prisoners of war, without any charge for commission, and for postal parcels to be registered and insured without charge.

The German Government have also indicated their intention of permitting correspondence to pass between British prisoners of war and their friends in this country. Letters and parcels from prisoners of war in Germany will be delivered free of charge if they bear clear indication that they come from a prisoner of war.

The Austrian Government have also announced their intention of granting facilities for obtaining information about any prisoners of war in their hands.

## XXVI.

**Contraband of War** (see also pp. 215 and 217).

PROCLAMATION (SEPTEMBER 21, 1914).

By THE KING.

### A PROCLAMATION

SPECIFYING CERTAIN ADDITIONAL ARTICLES WHICH ARE TO  
BE TREATED AS CONTRABAND OF WAR.

GEORGE R.I.

WHEREAS on the fourth day of August last We did issue Our Royal Proclamation specifying the articles which it was our intention to treat as contraband of war during the War between us and the German Emperor,

AND WHEREAS on the twelfth day of August We did by Our Royal Proclamation of that date extend our Proclamation aforementioned to the War between Us and the Emperor of Austria, King of Hungary,

AND WHEREAS by an order in Council of the twentieth day of August, 1914, it was ordered that during the present hostilities the Convention known as the Declaration of London should, subject to certain additions and modifications therein

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specified, be adopted and put in force as if the same had been  
ratified by Us,

AND WHEREAS it is desirable to add to the articles to be  
treated as contraband of war during the present War,

ion  
AND WHEREAS it is expedient to introduce certain modifica-  
tions in the Declaration of London as adopted and put in force,

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Now, THEREFORE, We do hereby declare, by and with the  
advice of Our Privy Council, that during the continuance of  
the War, or until We do give further public notice, the articles  
enumerated in the Schedule hereto will, notwithstanding any-  
thing contained in Article 28 of the Declaration of London, be  
treated as conditional Contraband.

**SCHEDULE.**

Copper, unwrought.

Lead, pig, sheet, or pipe.

Glycerine.

Ferrochrome.

Hæmatic Iron Ore.

Magnetic Iron Ore.

Rubber.

Hides and Skins, raw or rough tanned (but not  
including dressed leather).

Given at Our Court at *Buckingham Palace*, this Twenty-  
first day of September, in the year of our Lord one thou-  
sand nine hundred and fourteen, and in the Fifth year of  
Our Reign.

**GOD SAVE THE KING.**

**XXVII.**

**Abbreviations.**

Hague Convention No., or a No. alone, means Hague Con-  
vention of 1907, the No. being the number of the Con-  
vention in the Order set out in the Final Act of the  
Hague Conference of 1907.



**Regs.:** Regulations annexed to The Hague Convention of 1907 relating to the Laws and Customs of War on Land.

**Gen. Conv.:** Geneva Convention of 1906 for the Amelioration of the Condition of the Wounded and Sick of Armies in the Field.

**Decl. of London:** Declaration of 1909 concerning the Laws of Naval War.

**Manual of Land Warfare:** An exposition of the laws and usages of war on land for the guidance of H.M. Army.

**Problems, etc.:** Barclay's Problems of International Practice and Diplomacy. London, 1907.

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